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Publications

# ONTARIO LABOUR RELATIONS BOARD REPORTS

December 1993



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# **ONTARIO LABOUR RELATIONS BOARD REPORTS**

**A Monthly Series of Decisions from the  
Ontario Labour Relations Board**

**Cited [1993] OLRB REP. DECEMBER**

**EDITOR: RON LEBI**

Selected decisions of particular reference value are  
also reported in *Canadian Labour Relations Boards  
Reports*, Butterworth & Co., Toronto.

Typeset, Printed and Bound by Union Labour in Ontario





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**1922-93-U; 1923-93-R Laundry and Linen Drivers and Industrial Workers Union, Local 847, Applicant v. CMP Group (1985) Ltd., Responding Party**

**Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Board finding that employer violated the Act by laying off two employees and by soliciting and obtaining signatures of employees on anti-union petition - Employer directed to reinstate and compensate employees, to allow union to meet with bargaining unit employees during normal working hours, and to post Board notice in workplace - Board also certifying union under section 9.2 of the Act**

**BEFORE:** *Bram Herlich*, Vice-Chair.

**APPEARANCES:** *E. M. Mitchell, Phillip Spurrell; Deirdre Hilary, Gurgit Pal Singh and Balwinder Sangha* for the applicant; *Brian W. King, Julie Padamsey and Salima Padamsey* for the responding party.

**DECISION OF THE BOARD;** December 2, 1993

1. Board file 1923-93-R is an application for certification in which the applicant (also referred to as the "union") relies on section 9.2 of the *Labour Relations Act*. Board file 1922-93-U is an application under section 91 of the Act alleging violation of sections 65, 67, 71 and 81. The parties agreed that these two related matters ought to be heard together.

2. The Board is satisfied that the applicant is a trade union within the meaning of section 1(1) of the Act.

3. Having regard to the agreement of the parties the Board is also satisfied that:

all employees of CMP Group (1985) Ltd. in the Town of Oakville, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff,

constitute a unit of employees of the responding party (also referred to as the "company" or the "employer") appropriate for collective bargaining.

4. At the commencement of the hearing in these matters the parties agreed that the persons listed as #1 and #4 to Schedule D of the list of employees filed by the company ought to be deleted from that list. Subject to the union's assertion (which depends on the outcome of the section 91 application) that the grievors Balwinder Sangha and Gurjit Pal Singh (both of whom were laid off prior to the certification application) ought to be added to the list, the parties were agreed that the lists filed by the employer for the purposes of the count were accurate. Regardless of the outcome of the section 91 application (which involves more than the layoff of the two named grievors), the union, in view of the membership evidence filed in support of the certification application, is in a dismissible position but for its claim under section 9.2.

5. The application under section 91 relates to the layoff of Balwinder Sangha (hereinafter referred to as "Sangha") on August 26, 1993 and of Gurjit Pal Singh (hereinafter referred to as "Gurjit") the following day. By decision of the Board (differently constituted) dated September 20, 1993 these two grievors were ordered reinstated on an interim basis pursuant to an application for interim relief in Board file 1924-93-M. The union also impugns the employer's conduct in relation to a meeting of certain employees it conducted on August 26, 1993 and in relation to petitions it circulated and filed with the Board subsequent to the reinstatement of the two grievors. The

applicant also claims that since his return to work, Gurjit has had his working hours unlawfully reduced by the company.

6. Hearing in this matter continued for five days; the Board heard the evidence of 12 witnesses; 32 documents were marked as exhibits. Many of the central witnesses for both parties testified through Punjabi interpreters. The Board would be less than candid if it failed to acknowledge that evidence received in this fashion has not simplified its task. This is not a comment on the quality of the translation provided, but a general acknowledgement that certain nuances, inflections and other sometimes significant aspects of oral testimony may well go unappreciated by an adjudicator who is unable to understand a witness' evidence directly but must rely on the mediating effect of a third party translator. This is an unfortunate, but perhaps unavoidable infirmity inherent in a situation as the present one. However, I have felt compelled to comment on this not merely to acknowledge the difficulties generally posed by translated evidence, but because I felt there may well have been even further limitations in the present case. There were points in the evidence of certain witnesses (again, for both parties) where I felt genuinely perplexed. By way of general examples, on numerous occasions questions, which appeared to me to be relatively straightforward and simple, had to be repeated several times sometimes resulting in a series of answers which appeared only remotely related to the question posed and reposed. Similarly, a number of witnesses appeared to engage in what might best be described as semantic sparring in response to questions posed. It has been difficult to determine whether these types of incidents reflect mere translation difficulties, a broader cultural gap in relation to what may be an entire spectrum of matters including conventions of interpersonal interaction (perhaps, even more specifically, in a litigation environment) or, something the Board may be more familiar with - reluctant, evasive or even deceitful witnesses. While this layer of factors has not simplified the task before me, it does not, of course, absolve me of one of my primary responsibilities, that is to evaluate the evidence, including the credibility of all witnesses, and to arrive at my findings of fact in this matter. The considerations just outlined have provided some of the context of that process. In addition, in coming to my findings of fact, I have carefully considered all of the evidence before me and taken into account such factors as: the demeanour of the witnesses when giving their evidence, the clarity and consistency of that evidence when tested in cross-examination, the witnesses' ability to recall events and resist the tug of self-interest in shaping their answers, and what seems most probable in all the circumstances.

7. It is also appropriate to comment briefly on evidence the Board did not hear. As will become clear, Parviz Padamsey (hereinafter referred to as "Parviz") who is a member of management and the wife of Julie Padamsey (hereinafter referred to as "Julie"), the company President and majority shareholder, played a significant role in a number of events we are about to detail. She did not testify. In reply evidence the employer sought to file medical evidence it asserted would explain her inability to testify. The union objected to the introduction of that evidence as improper reply evidence and also on the basis that it was not given notice or the opportunity to require the cross-examination of Dr. Y. Thobani, a family doctor and the author of the document. Even assuming that the document ought to be received as evidence (it was marked as an exhibit subject to the union's objection to its admissibility in the circumstances), I am not persuaded that its contents, the sum total of which are as follows:

"This patient has been under my care for the past 10 years. She is suffering from fibromyalgia and anxiety depression and is not fit to testify at the present time because of acute anxiety reaction.

are sufficient to adequately explain Parviz's failure to testify. In arriving at this conclusion I have considered the terseness of the note, which is not authored by a specialist, the lack of any further medical information or opportunity to cross-examine, and the other evidence regarding Parviz's

ongoing ability to attend at work (she had overall joint responsibility for the operations in Julie's absence while the latter was in attendance at these hearings). I am not satisfied that it would have been impossible for Parviz to testify in these proceedings. However, while the union asked me to draw a negative inference from her failure to testify and while such a request may well be justified, I will not draw such a blanket inference in the circumstances. On the other hand, there were significant points in the events concerned where Parviz's testimony would have been helpful. The very lack of that evidence has obviously not been of assistance to the employer and has perhaps reduced the number of instances of direct conflict in evidence.

8. The employer runs a laundry principally servicing hospital and airline clients. It employs roughly 30 full and part-time employees, a significant number of whom speak only Punjabi or Polish.

9. The union's organizing campaign began in late August. On August 25, 1993 Anna Parussini (hereinafter "Parussini"), an experienced business representative with the applicant, and Neelam Aeri (hereinafter "Aeri") stationed themselves outside the company plant. (We shall refer to these two individuals as the "union organizers".) This was the first time Ms. Aeri was involved in an organizing campaign. She is a member, not an employee of the union, although she holds a number of union positions in the bargaining unit (not the one which is the subject of this certification application) in which she is employed. She was conscripted to assist Ms. Parussini because of her facility with the Punjabi and Hindi languages.

10. Balwinder Singh (hereinafter "Balwinder") and Rajinda Mann (hereinafter "Mann"), employees of the company, left work and boarded a bus headed for a nearby GO station; the union organizers followed them. At the station the employees were approached by Aeri while Parussini circled around in her car to subsequently rejoin the group. The union organizers identified themselves and indicated their interest in organizing employees of the company. The discussion continued while Balwinder got into the car Parussini was driving and Aeri and Mann stood just outside. The union organizers agreed to drive the two employees, who had now missed their bus, to Balwinder's home. Balwinder agreed to offer them a drink when they got there.

11. The four women spent a good deal of time at Balwinder's home discussing matters relating to employment and the possibility of unionizing the company's employees. Although there was conflicting evidence on the point, I am satisfied that the group would not have ended up in Balwinder's home and spent as much time there as they did unless Balwinder and Mann had, at least in the early stages of their meeting, given the union organizers some indication of their interest in and openness to the subject matter being discussed. The union organizers asked for names of other employees who might be interested in the union. Balwinder provided them with the name, telephone number and address of Sangha. She also mentioned the name of another employee, Surinder, but Aeri told Balwinder that because Surinder lived too far away the union organizers would not visit her at that stage. The union organizers asked about an employee they had seen driving away from the plant in a red car. Balwinder identified him as Gurjit and told the union organizers that he lived close to Sangha who could provide them with further information on how to contact him. I should note that both Balwinder and Mann denied providing the union organizers with the names or co-ordinates of any other employees. I prefer the evidence of the union organizers, particularly because there is simply no other explanation available or advanced before me as to how the union organizers found their way to Sangha's home later that day.

12. To the surprise and chagrin of the union organizers, the climate of the meeting changed drastically when Balwinder advised them that not only was she not supportive of the union but that it was her intention to report the events of that afternoon to the employer the following day. The

union organizers left Balwinder's home shortly after that and, after driving Mann to her home, proceeded to visit Sangha.

13. Early in that meeting Sangha exhibited surprise that Balwinder had provided the union organizers with her name and address and expressed the view that, because of Balwinder's special relationship to management, Sangha's employment was now in jeopardy. In any event Sangha continued to meet with the union organizers for close to an hour, expressed support for the union and undertook to talk to other employees, including Gurjit. That meeting concluded the union organizers' activities for the day.

14. The next day Balwinder did indeed advise management of the events of the previous day. Both Balwinder and Mann did not punch in until approximately 8:45, just before the machines they normally work on start up. However both acknowledged arriving at the plant around 7:30 and spending most of the time from then until they punched in at their regular work areas (whether or not they or other employees were actually working or paid for this time is not particularly relevant to our inquiry). It was during this time that Balwinder advised apparently anyone who cared to listen about the events of the previous day. There was a variety of descriptions of Balwinder's apparent state of mind at the time, some witnesses described her outbursts as constituting an unusual commotion, others apparently heard or noticed nothing. In any event, it was not disputed that Parviz was privy to the information volunteered by Balwinder. There is a significant dispute between the parties as to whether or not Balwinder communicated the names of the two grievors to management. Balwinder and Julie both deny that information was transmitted (Parviz did not testify). While there was no direct evidence that the grievors' names had been forwarded (directly or indirectly) to management, the union asked me to infer, on the basis of the evidence as a whole, that is precisely what happened. I shall return to this point.

15. Sangha arrived at work at approximately 8:45, after whatever commotion which may have been associated with Balwinder's account of the events of the previous day had subsided. It would appear that Julie was out of the plant on a delivery during most of this commotion. On his return he did, however, overhear at least part of what Balwinder was saying and understood her, in his limited knowledge of Punjabi, to be referring to "two women, one Italian, one Punjabi, GO station, union member". The precise parameters and sources of Julie's information about what Balwinder had reported remain vague. He denied any direct discussion with Balwinder. He acknowledged that on hearing her during his return to the plant, he went to the office to check with Parviz about what was going on. And although Parviz (who did not testify) was a major source of Julie's information, when he was asked in cross-examination if she mentioned the union he equivocated. According to Julie neither he nor Parviz can speak Punjabi. He also referred to at least one other unnamed employee who transmitted information to him and/or Parviz although the specific contents of that communication were not disclosed. Julie testified that he, at least initially, was sceptical of Balwinder's story; he couldn't imagine how a union could go and get people off a bus and make them sign a card. However, although Balwinder's account of the events in question, or at least Julie's understanding of that account, raised serious allegations, Julie denied making any attempt to get a direct account of those events (through a translator or otherwise) from the actual participants, Balwinder and Mann.

16. Later that day, at around 3:00 p.m., Julie delivered a written notice of permanent layoff to Sangha who initially resisted taking the written notice, preferring to return with her husband to accept it. The notice indicated that her final papers including termination pay could be picked up on the afternoon of September 10, 1993.

17. Less than an hour after delivering the layoff notice to Sangha, Julie convened a meeting

of six of the company's Polish speaking employees. Julie, Parviz and their daughter, Salima, who works in the office, attended on behalf of management. It would appear that Balwinder was also in attendance. The employer taped the discussion at the meeting, although Julie and Christopher Makowski, an employee who translated Julie's remarks from English to Polish, were the only ones to speak. Minutes of the meeting were prepared by the employer. They indicate that the meeting lasted approximately 20 minutes, that the "Meeting was called by Polish staff, because of the language barrier in reference to the incident with Balwinder Singh, early this morning", and that no questions were raised subsequent to Julie's address. The full text of that address as recorded in the minutes is as follows:

"This meeting is to notify you because it's your right as employees to know what happened to Balwinder Singh and Rajinder Mann and what the commotion was about."

"From what we understand", Balwinder and Rajinder, after working hours were approached by two women, an Italian lady and a Punjabi lady at the GO Station drove Balwinder and Rajinder to Balwinder's home because they had missed their bus.

"From what I can understand", Balwinder was harassed for the two hours that they were in her home, also, a threat was made by them against her husband who works at Ford, because she refused to sign some papers.

Balwinder was very upset and that's what happened this morning, and she was upset because her husband's job was threatened. She claims, that these ladies were Union, "I don't know the rules surrounding Union" but it is your political right as Canadians to be able to speak to them, but if you feel that you are being harassed or being threatened, in the same way that Balwinder was threatened, you can ask them to leave your home, car etc. Because they are not the police, they can not arrest you, charge you or threaten your husband's job.

18. Given the paucity of evidence concerning the precise content and sources of information provided to Julie, it is impossible for me to determine whether the account he provided to the Polish employees is an accurate reflection of the information provided to him. It is, however, clear to me that Julie's understanding of the events in question as typified by his evidence including the above address, diverges significantly from what actually transpired between the union organizers and the two employees. In general, I am satisfied that the level of harassment and coercion suggested and implied in Julie's and Balwinder's accounting of those events is seriously distorted. There is no evidence that the employees were spirited off the bus, as Julie suggested. While the union organizers were no doubt attempting to be persuasive, I am not satisfied that there was any inappropriate degree of compulsion involved; I am satisfied that the employees voluntarily accepted a ride from the union organizers, that Balwinder invited them into her home, freely offered them refreshment, and participated in the lengthy discussions that took place both before and after their arrival at her home. Similarly, having evaluated the conflicting evidence on the point, I am not persuaded that the union organizers made any threats directed at Balwinder's husband. It is utterly inconceivable to me that the union organizers, who did not previously know who Balwinder was or that they would end up at her home, would have been in possession of information about her husband's employment, as the evidence of Mann and Balwinder suggests. It is more likely that Balwinder misunderstood or deliberately distorted discussions the four women had about the availability of her husband's benefits in the event of his layoff and the desirability of seeking benefits for the company's employees even though some, like Balwinder, may currently have access to benefits through a spouse's employment. These are some of the further considerations which have led me to favour the testimony of the union organizers and other union witnesses over that of Balwinder and Mann in cases where that evidence conflicts.

19. On August 27, 1993, the day following the layoff of Sangha and the meeting with the Polish employees, Balwinder approached Gurjit and asked if he had seen the women from the

union, Gurjit replied in the negative, Balwinder accused him of lying and left. Later that same morning Julie delivered a written notice of layoff to Gurjit.

20. Not long after the layoffs the union filed the two instant applications as well as the application for an interim order in Board file 1924-93-M. That application was heard on September 17, 1993 and an oral ruling was delivered at the hearing (subsequently reduced to writing in a decision dated September 20, 1993) [now reported at [1993] OLRB Rep. Sept. 824] directing the interim reinstatement of the grievors as well as the posting and delivery to individual employees of a notice attached to the Board's decision.

21. Subsequent to that oral ruling but prior to the actual reinstatement of the grievors, the company commenced a campaign which included the solicitation of employee signatures on "anti-union cards". The company prepared these cards, which read as follows:

September 19, 1993

I ----- am a part/full time employee of CMP GROUP (1985) LTD. I do not wish to be a member of:

LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847.

Signature: -----

Date: -----

22. At least two meetings of employees were held - one on September 19 attended primarily by Punjabi speaking employees and the other the following day attended primarily by the Polish speaking employees. Some haste was involved so that the employer could file these documents with the Board by the September 21st terminal date. (Even assuming the doubtful proposition that the Board might ever view a statement of desire originated and circulated by an employer to be a voluntary expression of employee wishes, the perception of the significance of the terminal date may well have been misguided in view of the provisions of section 8(4) of the Act.) At both meetings a bilingual employee translated Julie's remarks into the relevant language. Minutes of the meetings were kept by the employer and they indicate Julie's identical remarks as follows:

The laundry and linen drivers and industrial workers union local 847, wants to certify the union here. We are opposing it. The union members will be contacting you to get your signatures, just as we want your signatures. We have cards here and we want your free vote to sign if you don't want to join or be the member of a union and so we have cards if you want to support us for that.

23. Both meetings were held in the office during or just before or after regular working hours. Employees at at least one if not both of the meetings were paid for their attendance. There was little discussion at these meetings and the vast majority of employees attending provided the signatures being solicited by the employer. The employer filed these petitions with the Board on the terminal date. There were a further 11 "anti-union cards" signed by employees whose names were not reflected in the relevant minutes as being present at either of the two meetings referred to. We have little evidence as to how those further signatures were solicited, though it appears clear from Balwinder's evidence and others that the two meetings recorded in the minutes are by no means exhaustive. The employer filed the petitions as part of its response and in support of its position that the certification application be dismissed; the union relied on the petitions and circumstances surrounding them as evidence of further unfair labour practices by the employer. By the conclusion of the hearing the employer conceded that the petitions did not and could not

advance its case and did not seriously dispute that its conduct in respect of originating and circulating the petitions constituted an improper and unwarranted interference in the selection of a trade union.

24. Before considering in greater detail whether the employer has violated the Act and whether certification under section 9.2 is available and warranted, I shall deal briefly with two arguments advanced by the employer.

25. The company argued that the union's certification application ought to be dismissed as a result of the threats the employer alleged the union organizers had made against Balwinder's husband's employment. Whatever the merits of the legal theory underpinning this argument, I have already found (see, for example, paragraph 17 above) that the alleged threats were not made. Consequently, this argument is rejected.

26. The employer advanced another novel argument. It asserted that the certification application ought to be dismissed because the evidence was at variance with the applicant's allegations and the declaration filed by Sangha. It argued by analogy to cases like *Pebrha Peterborough Inc.*, [1988] OLRB Rep. Jan. 76 in which an application for certification was dismissed because the Form 9 filed in support of that application was defective.

27. The employer's argument, however, improperly conflates pleadings and the Form 9. The latter (which is now Form A-4) is an adjunct to the membership evidence that the Board relies upon in determining a certification application. It is important to the Board because the membership evidence upon which it routinely relies is of a hearsay nature. Pleadings, generally speaking, are a pre-hearing indication of the case a party intends to prove by way of *viva voce* evidence which will be subject to the rigours of cross-examination. Failure to prove critical allegations set out in a party's pleadings may well result in a dismissal of its application. Not every variation between pleadings and evidence will have the same result. The case will, however, ultimately be decided on the basis of the evidence not the pleadings.

28. In the present case there were some variations between the pleadings (and Sangha's declaration) on the one hand, and the evidence on the other. None of these discrepancies, however, were of the significance suggested by the employer. In some cases certain allegations were withdrawn at the commencement of the hearing or not seriously pursued at its conclusion. Other discrepancies may have resulted from language barriers (in this respect the union would certainly have been better advised to have had a Punjabi translator available not only when all of the relevant information was gathered from Sangha but also when the declaration prepared on the basis of that information was executed). In any event none of these discrepancies, apart from weakening the union's ability to pursue certain aspects of its case, lead me to conclude that its entire case ought to be dismissed or that the union knowingly filed material it knew was false. The fact of the matter is that with respect to most, and certainly the most significant aspects of its case, the evidence the union called was entirely consistent with the material it had filed. Consequently, this aspect of the employer's argument must be rejected as well.

29. The union's certification application can only succeed if it is granted pursuant to section 9.2 of the Act which provides:

**9.2** If the Board considers that the true wishes of the employees of an employer or of a member of an employers' organization respecting representation by a trade union are not likely to be ascertained because the employer, employers' organization or a person acting on behalf of either has contravened this Act, the Board may, on the application of the trade union, certify the trade union as the bargaining agent of the employees in the bargaining unit.

30. Thus, unless it is established that the employer has contravened the Act, the application for certification must be dismissed. We turn now to a more specific review of the evidence with a view to determining whether there has been any violation of the Act as alleged by the union.

31. The union's allegation that since returning to work pursuant to the Board's interim order, Gurjit has seen his hours of work reduced from approximately 40 hours per week to approximately 25 hours per week was not seriously pressed in argument and is not supported by the evidence. This aspect of the union's complaint is dismissed.

32. The company's conduct, as it virtually conceded, in soliciting signatures on petitions in opposition to the union is clearly a violation of section 65 of the Act which prohibits an employer from interfering in the formation, selection or administration of a trade union or the representation of employees by a trade union. The gravity of this violation and its impact on the availability of relief under section 9.2 will be discussed later in this decision.

33. The union has alleged that the meeting held by the employer on August 26, 1993 was in contravention of the Act. While I have considerable doubts as to the *bona fides* of the company's conduct and motives in this regard, I have determined that, in view of the other findings of violation and the remedies flowing therefrom (which will become evident later in the decision), it is not necessary for me to determine whether this aspect of the employer's conduct constitutes a breach of the Act.

34. Not surprisingly, it was the layoff of Sangha and Gurjit which was the major subject of the parties' arguments in respect of the section 91 complaint. The Board's task and the application of the reverse onus in a case such as the present one has been described in *The Barrie Examiner*, [1975] OLRB Rep. Oct. 745 (at paragraph 17) in the following terms:

Given the requirement that there be absolutely no anti-union motive, the effect of the reversal of the onus of proof is to require the employer to establish two fundamental facts - first, that the reasons given for the discharge are the only reasons and, second, that these reasons are not tainted by anti-union motive. Both elements must be established on the balance of probabilities in order for the employer to establish that no violation of the Act has occurred.

35. At the time the layoffs were imposed the employer cited "economic reasons", no further explanations were provided. In its response to the present application "economic reasons" were again cited as the explanation for the layoffs in question, again without any further explanation. At the hearing the meaning of economic reasons was amplified. The employer relied upon what it asserted has been a significant downturn in business. The major example pointed to is a series of negotiations with a major client in which a significant portion of the work under contract to the company was lost. A series of correspondence commencing in May of 1992 and culminating in July of this year was filed. The work in question was lost, however, as of June of 1992. For a few months following that loss, the customer permitted the employer to increase its charges for the remaining work but as of December 1, 1992, the previous lower charges on the remaining work were reinstated. We were not advised of any significant changes in price or volume of work under that contract since that date. It is difficult to accept those events, particularly given their vintage, as the real or exclusive explanation for layoffs which were implemented within 48 hours of the commencement of the union organizing campaign.

36. Julie testified that, within hours of their layoffs, both of the grievors were given the option to return to work which each refused. He testified that he agreed to allow Gurjit to return to work and that Parviz made a similar offer to Sangha. I prefer the evidence of the grievors that no such offers were made. I would note that while the company found it necessary or advisable to use the services of a Punjabi translator when soliciting employee signatures in opposition to the

union, it apparently felt no corresponding need in the context of offers Julie testified were made to the grievors. I would also note that to the extent one might even accept that such offers were made but perhaps ineffectively communicated, the company's rationale for requiring the layoffs in the first instance is undermined. This is particularly evident in Sangha's case. The timing of her layoff coincides with the departure of another employee on maternity leave - she was replaced while Sangha was laid off. The resulting unnecessary quality of Sangha's layoff (something which the employer conceded, at least after the fact) points to other considerations at work in the decision to lay her off. In Gurjit's case the company's assertion that he had effectively quit by not reporting for work after the employer allegedly rescinded his layoff is bolstered by an employer letter to him dated August 30, 1993 asserting that view. However, that letter refers to a Friday afternoon meeting which I am satisfied (given Gurjit's evidence, which I accept, surrounding the timing of his mother's visit from India) did not take place. Furthermore, while the letter bears the date of August 30th, no attempt was made to transmit it or its contents to Gurjit prior to September 10th when he collected his final papers from the employer. Finally, I do not have the benefit of Parviz's evidence regarding these events although she appears to have had significant involvement in them.

37. The company also advanced (for the first time at the hearing) explanations for why (assuming the economic necessity for some layoffs) Sangha and Gurjit were selected. These were related to what can perhaps best be described as attempts to resurrect incidents which were relatively trivial (there was no written documentation in relation to either of the allegations at the time they occurred) and transform them, after the fact, into justifications for the selection of the grievors for layoff.

38. The company's evidence as a whole and, in particular regarding the justification for layoffs and the selection of the grievors to be laid off, simply does not ring true. It represents an artifice of layers of improbable and sometimes conflicting explanations for its conduct. I am not persuaded that the reasons advanced by the company are the real or complete explanation for its decision to lay off the grievors.

39. The grievors' names were provided to the union organizers by Balwinder. Balwinder reported the meeting with the union organizers to the employer. Although there is no direct evidence on the point, taking the evidence as a whole, including my assessments of credibility, I find that it is more probable than not that the grievors' names were communicated to the employer who thereupon effected their layoffs at least partly because of its belief that they were members of a trade union or were exercising rights under the Act. In any event, the employer has not persuaded me that its conduct was not at least tainted by improper motives.

40. I should note that the evidence and material filed clearly discloses that both of the grievors have supported and participated in the lawful activities of the union. In Gurjit's case, however any such activity took place subsequent to his layoff, as the union had not previously contacted him. In other words, any belief the employer may have had about Gurjit's union activities was mistaken or, perhaps more accurately, premature. The employer did not, however, dispute the proposition that the Act proscribes the discharge or layoff of employees for tainted, albeit mistaken, motives.

41. In all of the circumstances I am satisfied that the layoffs of Sangha and Gurjit were contrary to section 67 of the Act. They are to be forthwith reinstated and compensated for all losses flowing from this violation of the Act.

42. Having determined that the employer has violated the Act we turn finally to a consideration of the remedies flowing from those violations including the union's claim for certification under section 9.2.

43. A contravention of the Act is a necessary but insufficient condition precedent to the exercise of the Board's power under section 9.2. We must now determine whether the employer's contraventions are of such a nature that the true wishes of employees respecting trade union representation are not likely to be ascertained. If it is determined that such wishes are not likely to be ascertained, the Board may exercise its discretion to certify the applicant. We should note that, as a result of recent amendments to the Act, the Board (as it was under the former section 8) is no longer directed to determine whether the applicant has membership support adequate for the purposes of collective bargaining as a condition precedent to the exercise of the Board's jurisdiction under section 9.2. Consequently, it was not suggested that the applicant's admittedly meagre membership support in this case was a bar to certification under section 9.2.

44. Having considered the nature of the employer's violations as well as other aspects of the case before me, I am persuaded that the true wishes of employees are unlikely to be ascertained and that this is an appropriate case for certification under section 9.2.

45. There is no doubt that the employer's response came early in the organizing campaign - Sangha was laid off within approximately half a day after its commencement; Gurjit less than 24 hours after that. Their lay off would clearly have had a chilling effect on other employees contemplating or who might otherwise have contemplated support for the union. And while the union was successful in achieving the interim reinstatement of the grievors through an application to the Board, the employer's next violation of the Act and its timing are significant. The employer acted in the limited interval between the Board's oral ruling on the interim order and the actual return of the grievors to the workplace. The notice which the Board directed to be posted in the workplace and mailed to individual employees listed a number of employee rights including:

... the right to remain neutral. To refuse to sign documents opposing the union or to refuse to sign a union membership card.

46. This, of course, is a reference to the freedom individual employees have to determine whether or not they wish to support or otherwise participate in union activities. It is a choice to be made by employees. And while an employer is free to express views on the subject, it is not to be a participant in the choice. Immediately after confirming the employees' individual choices by way of the notice prepared by the Board, this employer waded into the fray and unlawfully interfered with its employees selection of a trade union. Contrary to the employer's assertions, this was not a violation which the Board views as either minor or merely technical. In the face of the Board's interim reinstatement order, the employer conducted captive audience meetings of employees where it exercised its, at least implicit, economic power over those employees to encourage them to sign documents opposing the union. The Board has long observed that the coercive nature of such conduct does not depend on the express articulation of economic or physical threats. It would not be unreasonable for an employee confronted with such conduct to conclude that there may be employment consequences visited on those who do not conduct themselves in accordance with an employer's express or implied instructions or preferences.

47. The clear and unambiguous combined effect of the employer's conduct and its timing can perhaps best be appreciated in considering the evidence of a number of witnesses and in particular that of two employees called to testify on behalf of the company.

48. Surinder Kaur was called to testify in reply to evidence Sangha had given. In particular, Kaur testified in chief that she had had lunch with Sangha on the day the latter was laid off. What is perhaps most notable about her evidence is what she could not testify to. She claimed not to know of Sangha's lay off at the time it happened or even the subsequent day when she had a telephone conversation with her, and although she was at work at the time of Balwinder's "commo-

tion'', she had no recollection of it and couldn't recall having any discussions with anyone on that day regarding the visit of the union organizers to Balwinder's home. Finally, despite her certainty in chief about having had lunch with Sangha on the 26th, she conceded on cross-examination that she had no specific recollection of lunch on that date.

49. Similar peculiarities arose in the evidence of Mann. While she was present for the duration of the meeting with the union organizers she had great difficulty recalling the specifics of the discussions with them. One of the few exceptions to this was her recollection of the threats she (and Balwinder) claimed were made against Balwinder's husband. While I have already dealt with that issue and determined that those threats were not made (again, Mann's evidence on this point, like Balwinder's, may well have been mistaken rather than simply dishonest), one cannot escape the conclusion that Mann would have perceived it to be in the employer's interest to give such testimony. In a similar vein, Mann was simply unable to answer on whose instructions she had prepared the declaration filed in the interim application and made an exhibit in these proceedings. Her discomfort in response to the question was palpable. Again her response and deportment were one of an employee perhaps more concerned with the employment consequences of her evidence than with its completeness.

50. These observations are not inconsistent with another in relation to Sangha's evidence. The union initially alleged that on reporting for work on the day of her layoff she was assigned unusual jobs and was isolated from her usual coworkers. The employer made much of this allegation and related evidence. The union withdrew a number of its allegations in this regard and much of this area of evidence is of questionable significance. What is clear, however, is that Sangha felt isolated and shunned by her coworkers, something she was not accustomed to. Whether that was the result of deliberate instructions by the employer begs the question. Sangha's perception along with the comportment of the witnesses just described is eloquent testimony to the climate of anxiety and fear which appear to have so completely permeated the workplace that its traces were evident in the hearing room. That climate is the result, in large measure of the employer's unlawful conduct. And it is that climate which convinces me that the true wishes of the company's employees respecting representation by the union are not likely to be ascertained.

51. I should note as well that this description of the climate at the workplace is consistent with the evidence of both Gurjit and Philip Spurrell, an organizer with the union, both of whom testified about their ongoing efforts to recruit further union members among the company's employees. Although they were able to secure two additional cards, the bulk of their evidence demonstrates that they have been met for the most part with fear and reluctance to talk.

52. The employer argued that its violations of the Act were not significant enough to warrant certification without a vote. It suggested that a representation vote would in fact be the appropriate remedial response in this case although it was unable to point with any specificity to where the Board might find the authority to direct such a vote in a case such as the present one (where the union's level of membership support was well below even the 35 percent required for the taking of a pre-hearing representation vote). In fairness, the employer submission was premised on its solicitation of anti-union petitions as the extent of its unlawful conduct. I do not have to decide whether that violation, standing alone would warrant certification under section 9.2. since the employer's violations in this case were more extensive. It obviously makes little sense, however, to consider the directing of a vote as the appropriate remedial response in a case where it has been determined that the true wishes of employees are unlikely to be ascertained. No other options were canvassed by the employer. In any event, I am satisfied that the statutory preconditions to the granting of certification under section 9.2 have been met and that this is an appropriate case for such a certification as well as other remedies, detailed below, in relation to the section 91 applica-

tion. A certificate will issue to the applicant in respect of the bargaining unit set out at paragraph 3 above.

53. In summary the Board has found that:

- (a) the layoffs of Sangha and Gurjit were contrary to sections 65 and 67 of the Act;
- (b) the employer's conduct in soliciting anti-union petitions was in violation of section 65 of the Act; and
- (c) as a consequence of the employer's unlawful conduct, the true wishes of employees respecting representation by the trade union are unlikely to be ascertained.

54. As a consequence, and in addition to the certification of the applicant, the Board hereby:

- (d) directs the responding party to reinstate Balwinder Sangha and Gurjit Pal Singh, with full compensation for all losses suffered as a result of their unlawful layoff;
- (e) directs that representatives of the applicant trade union be allowed to convene up to two meetings of bargaining unit employees, in the absence of members of management, for a combined period of not more than three hours, on company premises during normal working hours without loss of pay for employees attending such meetings;
- (f) directs that the responding party forthwith provide to the applicant a list of names of all employees in the bargaining unit, together with their addresses and telephone numbers;
- (g) directs that the responding party provide the applicant union for a period of one year from the date herein reasonable access to an employee notice board in the plant for the posting of union notices concerning all aspects of the employees' representation including the negotiation of a collective agreement with their employer; and
- (h) directs the responding party to post the notice attached as Appendix "A" in conspicuous places in the workplace for a period of 60 days and to give to each employee in the bargaining unit a copy of the said notice. The responding party is to make every reasonable effort to insure that the posted notice is not defaced or obscured in any way.

55. The Board will remain seized with respect to the quantification of damages or any other matter arising from the implementation of this decision.

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Appendix "A"

The Labour Relations Act

# NOTICE TO EMPLOYEES

## Posted by Order of the Ontario Labour Relations Board

WE HAVE POSTED THIS NOTICE IN COMPLIANCE WITH AN ORDER OF THE ONTARIO LABOUR RELATIONS BOARD ISSUED AFTER A HEARING IN WHICH THE UNION AND THE COMPANY PARTICIPATED. THE ONTARIO LABOUR RELATIONS BOARD FOUND THAT CMP GROUP (1985) LTD. VIOLATED THE LABOUR RELATIONS ACT BY LAYING OFF BALWINDER SANGHA AND GURJIT PAL SINGH AND BY SOLICITING AND OBTAINING THE SIGNATURES OF EMPLOYEES ON ANTI-UNION PETITIONS. THE ONTARIO LABOUR RELATIONS BOARD FURTHER CONCLUDED THAT AS A RESULT OF THESE VIOLATIONS, THE TRUE WISHES OF THE EMPLOYEES WERE NOT LIKELY TO BE ASCERTAINED, AND THE ONTARIO LABOUR RELATIONS BOARD CERTIFIED THE UNION AS BARGAINING AGENT FOR THE GROUP OF EMPLOYEES DESCRIBED AS:

ALL EMPLOYEES OF CMP GROUP (1985) LTD. IN THE TOWN OF OAKVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE, CLERICAL AND SALES STAFF.

THE ONTARIO LABOUR RELATIONS BOARD HAS ORDERED THE COMPANY TO REINSTATE AND COMPENSATE THE EMPLOYEES WHO WERE LAID OFF AND TO ALLOW THE UNION TO MEET WITH EMPLOYEES IN THE BARGAINING UNIT DURING NORMAL WORKING HOURS.

THE ACT GIVES ALL EMPLOYEES THESE RIGHTS:  
TO ORGANIZE THEMSELVES;  
TO FORM, JOIN AND PARTICIPATE IN THE LAWFUL ACTIVITIES OF A TRADE UNION;  
TO ACT TOGETHER FOR COLLECTIVE BARGAINING;  
TO REFUSE TO DO ANY AND ALL OF THESE THINGS.

WE ASSURE ALL OF OUR EMPLOYEES THAT WE WILL NOT DO ANYTHING THAT INTERFERES WITH THESE RIGHTS.

CMP GROUP (1985) LTD.

PER: \_\_\_\_\_  
(AUTHORIZED REPRESENTATIVE)

**This is an official notice of the Board and must not be removed or defaced.**  
**This notice must remain posted for 60 consecutive working days.**

DATED this 2ND day of DECEMBER, 1993.

**3527-92-U William A. Curtis, Applicant v. The Communications, Energy & Paperworkers Union of Canada, The Canadian Paperworkers Union, Responding Party**

**Duty of Fair Representation - Practice and Procedure - Unfair Labour Practice - Board exercising its discretion against inquiring into complaint for various reasons, including its finding that inquiry would be an expensive and largely academic exercise serving no tangible policy or labour relations interest - Application dismissed**

**BEFORE:** *R. O. MacDowell*, Alternate Chair.

**DECISION OF THE BOARD;** December 2, 1993

**I**

1. This is the complaint of William Curtis, who contends that the responding party has contravened section 69 of the *Labour Relations Act*.

2. The named respondent is The Communications, Energy & Paperworkers Union of Canada ("CEPU"). The CEPU was formed a year or so ago, as a result of the merger of the Canadian Paperworkers Union ("CPU"), the Communications Workers Union and the Energy and Chemical Workers Union - three formerly independent trade union organizations. As a result of that merger, the CPU, as such, no longer exists. Nevertheless, for convenience in this decision, I will continue to refer to the "CPU", as Mr. Curtis does in this complaint. The allegations in the complaint are aimed at the CPU and its officers rather than the CEPU.

\* \* \*

3. Mr. Curtis was at one time the president of CPU Local Union 134. CPU Local 134 consisted of employees working at an Abitibi-Price papermill in Thunder Bay, Ontario. That papermill was closed in the Spring of 1991. It has not reopened. For practical purposes, therefore, CPU Local 134 has ceased to exist - whatever its relationship with the CPU might have been, and whatever its notional relationship may now be with the CEPU.

4. The allegations in this complaint focus, primarily, upon the actions of certain officers of the CPU in 1990-91, when the CPU was still an independent entity. I will outline some of these allegations below. However, in order to appreciate my disposition of this case, it is necessary to sketch in some background. As will be seen, this is neither the first complaint which Mr. Curtis has filed with the Board, nor is it the first complaint in which he has made these assertions.

5. It will be convenient to review Mr. Curtis' prior complaints in chronological order.

**II**

6. On September 13, 1991 Mr. Curtis filed complaint No. 1981-91-U. In that complaint, he made a variety of allegations. Some of these charges involve the 1990 CPU negotiations with Abitibi-Price, the relationship of these negotiations to CPU collective bargaining elsewhere in Canada, and the ratification of the collective agreement which would apply in Thunder Bay. Other allegations involve a three-day suspension which Mr. Curtis received in 1989, his conduct in an allegedly unlawful strike which resulted in his discharge in February 1991, Mr. Curtis' role as editor of a newsletter said to be critical of the (then) officers of the CPU, whether Mr. Curtis did or did not

misuse union property to produce that newsletter, and whether there was something improper about charges brought against him under the CPU Constitution in April-May 1991.

7. A number of the allegations in complaint 1981-91-U touch upon the internal politics of Local 134, or the relationship of Local 134 to the CPU and its national officers, or the status of Mr. Curtis as local president (or former local president) to speak on behalf of the members of Local 134. There was also a dispute about the status or rights of the individual selected to replace Mr. Curtis, who was entitled to choose counsel in an arbitration proceeding involving Mr. Curtis, and who could select the "union nominee" to such board of arbitration. There were questions about the company's obligation to recognize Mr. Curtis once he was no longer an employee (i.e. after his discharge for involvement in a work stoppage) and Mr. Curtis' relationship with others in the local. Finally, there were miscellaneous allegations about the treatment of other employees (Allan, Rubenick) in 1990-91.

8. The union (then the CPU) and the company both retained counsel and filed a Reply to these various allegations.

9. The union's Reply denies any breach of the Act, and sets out the union's perspective on both the political wrangles within Local 134, and the way in which it handled Mr. Curtis' various grievances - particularly the one arising from his discharge in February 1991, shortly before the closure of the Thunder Bay mill. That grievance was important since, for a time at least, there was an issue about Mr. Curtis' entitlement to severance pay because he had been discharged and therefore was no longer actively employed at the time of the mill closure. I have used the phrase "for a time at least" because in December 1991 there was a settlement of the complainant's discharge grievance, which gave Mr. Curtis a severance package based on a formula broadly similar to that made available to other employees actively at work at the time the mill shut down.

10. Mr. Curtis was not happy with that settlement. Indeed, both then and now he complains about the way in which it was structured and presented to him and to the members of Local 134 for ratification. But the settlement did provide him with severance pay in the sum of \$50,723.45, and pension enhancement in the sum of \$131,898.29 - both of which he accepted. And that acceptance was central to the employer's Reply.

11. The employer's Reply focuses primarily upon the severance package. The employer was not concerned about the factional disputes within Local 134, or the relationship between Local 134 and the "parent" CPU. The employer took the position that if the settlement was being challenged because of some alleged *union* impropriety in the way that it was obtained or ratified, Mr. Curtis was obliged to repay the amount received, and "take his chances" at the discharge arbitration that he had earlier demanded. He could not accept the money from the company, then challenge the procedure by which it had been obtained.

12. The employer submitted that it had decided to treat Mr. Curtis like other employees only to avoid an expensive and by then "academic" arbitration of the propriety of the complainant's discharge some months before. The company maintained that it had just cause to discharge the complainant as a result of his activities in connection with an unlawful strike, and only agreed to treat Mr. Curtis like other employees to avoid an arbitration exercise of doubtful practical utility, but obvious cost. To avoid that costly process, the company largely disregarded Mr. Curtis' termination, and calculated his severance pay in substantial accordance with his accumulated seniority - i.e. in much the same way that it dealt with other workers who were terminated when the mill closed. By the time complaint 1981-91-U was filed, of course, the mill had been closed for some months and there was no prospect that Mr. Curtis would ever be reinstated to active employment. There was no "job" to which Mr. Curtis could be reinstated.

13. The employer's position was supported by the CPU, which submitted, in addition, that the Board should exercise its discretion not to hear the complaint because no useful public or labour relations purpose would be served by doing so.

\* \* \*

14. On February 18, 1992 Mr. Curtis filed a second complaint: No. 3671-91-U. This complaint repeated and, to some extent amplified, the allegations which he had raised five months earlier in complaint No. 1981-91-U. As before, there were assertions about: the 1990 ratification process; Mr. Curtis' role as editor of a newsletter; the three-day suspension in 1989; the dispute about who spoke for local members, and who should choose counsel and nominees for an arbitration board; the propriety of charges under the CPU Constitution; the complainant's role in the allegedly unlawful strike which led to his discharge and grievance; the employer's refusal to recognize the complainant as an employee spokesman after his discharge, and perhaps after his ouster as local president; the shut-down and severance settlement; and the problems of employees Allan and Rubenick back in 1990.

15. As before, the responding parties, through their counsel, filed Replies. Among other things, it was repeated that the complainant's severance package was equivalent to the one made available to other employees similarly situated, that the Local 134 membership had accepted the settlement, that the settlement was reasonable given the likely outcome of any arbitration of the complainant's discharge, and that Mr. Curtis could not accept the severance package and challenge it at the same time. The union reiterated that the mill had closed in April 1991, and that the complaint was vexatious and politically motivated. In the union's submission, litigation would serve no public or labour relations purpose, because much of it involved internal union politics which were beyond the ambit of section 69, and, in any event, there was no basis for the particular remedies that Mr. Curtis sought.

16. This outline gives the "flavour" of the two earlier complaints.

\* \* \*

17. A pre-hearing conference was held to consider the scope of this dispute, the probable length of the hearing, and the possibility of narrowing the issues. The pre-hearing conference Vice-Chair concluded that the hearing could very well be a protracted one. There were significant disputes about the facts, as well as disputes about whether various issues could, or should, be dealt with under section 69. As I have already noted, there were "preliminary" arguments to dismiss on various grounds, or to proceed on conditions, or that certain matters were beyond the ambit of section 69.

18. Meanwhile, in March 1992, Mr. Curtis filed a third complaint (No. 3891-91-U). This new complaint alleged that Local 134 and/or the CPU had failed to provide financial statements as required by section 87 of the Act. I shall return to this complaint below.

\* \* \*

19. Complaints 1981-91-U and 3671-91-U were listed for hearing in the Summer of 1992. Quite a number of hearing days were contemplated, but the first two days were set aside to deal with preliminary issues (i.e. before getting into the main body of the evidence) and the hearing for that purpose was scheduled to take place in Toronto.

20. Mr. Curtis demanded that the hearing, *in its entirety*, be held in Thunder Bay, and when

the Board refused to accede to this request, he withdrew his complaints. The withdrawal is dated July 28, 1992.

21. But that was not the end of the matter. Mr. Curtis then complained to the Ombudsman, who undertook an investigation of the process that the Board had followed in the case. I do not know what that investigation involved; however, on February 3, 1993 the Ombudsman issued her report. She concluded that, in all the circumstances, the Board had not acted unreasonably.

22. This complaint (No. 3527-92-U) was filed a month later, on March 4, 1993.

\* \* \*

23. Complaint 3891-91-U (the financial records complaint) came on for hearing before a panel of the Board, in Thunder Bay, in mid-June 1993. The complaint was dismissed on August 17, 1993.

24. The Board decision of August 17, 1993 speaks for itself and need not be repeated here. It suffices to say that the Board found that there was no breach of the Act, and that even if there had been a breach of the Act, there was no basis for any of the remedies which Mr. Curtis sought. The Board noted that Local 134 was moribund; and that while there had certainly been shoddy record-keeping in the period March 31, 1991 - December 31, 1992 (i.e. in the eighteen months or so after the mill closed), the Board could not conclude that there was any impropriety, or any basis for any further Board action. The Board wrote, in part:

"Insofar as directing the wide distribution by the responding party of the Busset report [on the financial affairs of Local 134] we are not satisfied that such a remedy is appropriate or would serve any useful labour relations purpose. Most of the individuals affected have long since severed their direct and active ties with the Local. Apart from the complainant, it does not appear that the lack of information now and heretofore provided has generated any serious concern..."

25. With that background, then, I turn to this complaint, No. 3527-92-U, filed on March 4, 1993.

### III

26. When one compares the allegations in the instant complaint (3527-92-U) with the allegations in the earlier two complaints (1981-91-U, 3671-91-U), it is apparent that the contentions relate to essentially the same time period and essentially the same behaviour. As before, there are assertions about: the 1990 bargaining and ratification of the collective agreement; the complainant's role as editor of a newsletter; the complainant's removal from office in or after October 1990 and his relationship with the company, local union officials and CPU officers thereafter; his three-day suspension in August 1989; his discharge in February 1991 as a result of his activities in connection with an allegedly unlawful strike; the dispute about who had the right to select an arbitration panel or retain counsel; the company's refusal to deal with the complainant because he was no longer an employee and/or an officer of the local union; the charges brought under the Union Constitution in April-May 1991; the plant shut-down and the complainant's severance entitlement, if any, because he was not then an active employee; the letter of understanding settling various grievances, the way in which the settlements were ratified, and the complainant's personal severance entitlements.

27. In other words, this "new" complaint (No. 3527-92-U) involves, in substance, a re-filing of the two earlier complaints which were withdrawn in July 1992. What the complainant seeks to do through the vehicle of a new complaint is litigate, in Thunder Bay, the allegations which were

scheduled for hearing in the Summer of 1992, then withdrawn when the Board did not accede to his request to have the entire hearing in Thunder Bay.

28. In my view, this is vexatious and an abuse of process which should not be entertained.

#### IV

29. Section 91 of the *Labour Relations Act* is permissive. The Board has a *discretion* whether or not to inquire into an unfair labour practice complaint. The Board need not proceed simply because a complaint has been filed. And, in my view, that discretion under section 91 should be exercised against inquiring into the instant complaint.

30. As a practical matter, Local 134 no longer exists. Nor does the Abitibi-Price mill in Thunder Bay. Nor does the CPU - at least as formerly constituted. Against that background, I see little purpose in a multi-day inquiry into the political wrangling within Local 134 in 1990-91, or the relationship between Local 134 and the CPU, or the complainant's grievances against various CPU officers. Such inquiry would be an expensive and largely academic exercise, serving no labour relations purpose other than to provide the complainant with a forum to pursue political grievances, some of which are not properly the subject of section 69 in any event.

31. The Board does not ordinarily award "costs" (i.e. require the losing party to pay the litigation costs of the winner), but this does not mean that the litigation process is costless to the parties or the public. Before embarking upon a time-consuming and costly exercise, engaging the time of lawyers, public adjudicators, and witnesses who might be compelled (by subpoena or otherwise) to testify or answer charges about what happened in 1990-91, I think the Board should be satisfied that some tangible policy or labour relations interest would be served by that exercise. I am not persuaded that any such interest would be served in this case; moreover, I do not think that the complainant should be entitled, now, to attack or seek to unravel a settlement from which he has derived substantial financial benefit. Nor would most of the remedies the complainant seeks appear to be appropriate. As noted, the Board does not award "costs" (one of the things he seeks) and, for example, I do not see what labour relations purpose would be served by requiring the CEPU (i.e. the new amalgamated union) to post notices or run newspaper advertisements concerning the way in which the CPU or its officers once dealt with the now defunct Local 134 or its members.

32. More fundamentally, though, this complaint (No. 3527-92-U) is a transparent attempt to revive and relitigate the very complaints which were withdrawn in July 1992. Whatever the circumstances surrounding that withdrawal, I do not think that it is open to the complainant to file essentially the same charges seven months later. In my view, that is not an appropriate use of the complaint mechanism provided under section 91, nor would it be fair to the other parties to require them to defend against allegations withdrawn in July 1992.

33. For the foregoing reasons, and in the exercise of the Board's discretion under section 91, this complaint is dismissed.

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**2338-93-M International Association of Machinists and Aerospace Workers, Local Lodge 2792, Applicant v. DDM Plastics Inc., Responding Party**

**Collective Agreement - Reference - Settlement - Minister of Labour referring question to Board as to existence of collective agreement between the parties - Union acknowledging signed memorandum of settlement as well as ratification by members, but asserting that in absence of written notification to employer of ratification, settlement not elevated to status of collective agreement - Written notice of ratification not required - Board advising Minister that collective agreement in effect between the parties**

**BEFORE:** *M. Kaye Joachim*, Vice-Chair, and Board Members *R. M. Sloan* and *E. G. Theobald*.

**APPEARANCES:** *Mark Lewis*, *James Nugent* and *Victor Comeau* for the applicant; *Arthur P. Tarasuk*, *J. P. Barry*, *H. Koyle* and *K. Yasu* for the responding party.

**DECISION OF THE BOARD;** December 14, 1993

1. At the conclusion of the hearing on November 30, 1993 the Board issued the following decision:

This is a reference by the Minister of Labour pursuant to section 109 of the *Labour Relations Act*.

The following questions were referred to the Board:

Does a collective agreement exist between the parties and, if so, what are its effective dates?

Having reviewed the facts and having heard the parties' submissions, the Board makes the following determinations:

- i) There is a collective agreement in effect between the parties.
- ii) The term of the collective agreement is from August 1, 1993 to July 31, 1996, as set in the memorandum of settlement signed by the parties on July 23, 1993.

The Board will provide written reasons, to follow.

2. We now provide our written reasons.

Facts

3. The parties were previously bound by a collective agreement with a term covering the period March 11, 1991 to July 31, 1993 inclusive.

4. By letter dated May 10, 1993 the union served written notice of its desire to bargain with a view to renew the agreement then in operation, with modifications.

5. The employer was served notice of the composition of the union Contract Negotiating Committee.

6. The parties, represented by their respective Negotiating Committees, met in direct

negotiations, exchanged proposals and modified their respective positions on the following dates: May 21 and 28, June 9, 17, 18, 29; and July 1, 7, 8, 9, 14, 15, 16, 20 and 21, 1993.

7. From time to time in the course of the said direct negotiations, the parties "signed off" agreed upon amendments that were to be incorporated in the renewed collective agreement.

8. On July 21, 1993 the parties agreed in principle to effectively recommend to their respective principals, agreed upon terms that would form the basis of a collective agreement. This agreement was reached without the benefit of conciliation. The union did not specify that "notice of ratification" had to be provided to the employer in any particular form in order for ratification to be achieved. At the conclusion of the negotiations, the union did however, advise the employer that notification or ratification would be provided to Harley Koyle *orally* by Jim Nugent and other members of the Negotiating Committee who were also executive officers of the Local Executive. It was further agreed that the said terms would be incorporated into a memorandum of settlement which the union indicated it intended to present and use at a ratification meeting. Furthermore, the union notified the employer that a ratification meeting would be held on July 25, 1993, and that the union Negotiating Committee would be recommending acceptance of the terms of the memorandum of settlement.

9. The parties reduced to writing a memorandum of settlement which was signed by their respective representatives on July 23, 1993.

10. On or about July 26, 1993 the appropriate representatives of the employer were notified by *inter alia* the President of Local 2792, and members of the Negotiating Committee who were also officers of the Local Executive, that the memorandum of settlement had been ratified by a vote of one hundred and nineteen ballots in favour to seventy-five ballots opposed; furthermore, over the next few days, the representatives of the employer were advised on several occasions by several members of the Local Executive who are on the union negotiating committee, that ratification of the settlement by the membership had been achieved at the ratification meeting on July 25, 1993.

11. After being so advised by the union, the employer contacted all existing customers and in particular, those customers where the supply contracts were up for renewal and advised them that ratification had been achieved on a three year collective agreement. Furthermore, the employer advised some prospective customers with whom it was negotiating supply contracts that the employer had achieved ratification of a three year collective agreement.

12. On July 28, 1993 particulars of the ratification vote were reported in the *Tillsonburg News* under the headline, "Workers Ratify Contract". The article contained the following: "It's a good contract", said Youngberg, who recommended ratification to union members."

13. As a result of certain dissatisfaction with some of the terms of the memorandum of settlement by some members of the bargaining unit, the employer's Negotiating Committee called a meeting with the members of the union Negotiating Committee, on July 29, 1993.

14. At the meeting of July 29, 1993 the union Negotiating Committee confirmed to the employer's representatives that ratification had been obtained at the ratification meeting on July 25, 1993 but that some employees were requesting a "special meeting" pursuant to the terms of the union's Constitution, whereat the said employees intended to request a second ratification vote regarding the terms of the said memorandum of settlement. By letter dated August 6, 1993 the employer confirmed its position that notification had already been attained.

15. The employer was subsequently notified that a "special meeting" of the membership, pursuant to the union Constitution, was scheduled for August 7, 1993 at which time the question of whether a new vote was in order was to be debated and the terms and the status of the memorandum of settlement were to be explained to the membership again. When contacted by the employer, Mr. Nugent reconfirmed the results of the ratification vote held on July 25, 1993 and stated that he and the Committee intended to so reconfirm the results of the said ratification vote at the meeting scheduled for August 7, 1993.

16. On or about August 9, 1993 representatives of the employer were notified that as a result of the said "special meeting", the union intended to hold a second ratification vote on or about August 12, 1993.

17. Upon being advised by the union that the union intended to hold a second ratification vote, the employer immediately went on record and reminded the union that ratification had been obtained effective July 25, 1993 and served notice on the union that the employer would not recognize the said second ratification vote.

18. The second ratification vote was held on August 12, 1993 at which time the members of the bargaining unit were given the opportunity to vote to accept or reject the same memorandum of settlement that had been signed by the parties on July 23, 1993.

19. Immediately after the taking of the representation vote, the results of the vote were announced to the representatives of the employer by the Business Representative, Mr. Jim Nugent, and the Local President, Brett Youngberg. The results of the second ratification vote were as follows:

Total ballots cast:	379
Ballots cast to reject:	223
Ballots cast to accept:	155
Spoiled ballots:	1

At this time Mr. Nugent advised the representatives of the employer that the union would be making a "Request for Appointment of Conciliation Officer". Mr. Nugent and the members of the executive did not at any time prior to the "vote" of August 12, 1993, advise any representatives of the employer that ratification by the membership had not been achieved at the ratification meeting of July 25, last. In response to the notification of the vote results, the union was notified by the employer that ratification of the settlement had been attained on July 25, 1993 and that conciliation was therefore not necessary. The employer also undertook to advise the union of the employer's position regarding the union's intention to "Request for Appointment of Conciliation Officer".

20. On August 13, 1993 the union was advised that since the employer did not recognize the second ratification vote held on August 12, 1993, the employer intended to oppose the "Request for Appointment of Conciliation Officer" and to implement the terms of the settlement forthwith.

21. On August 13, 1993 the employer posted a notice to the members of the bargaining unit that the terms of the memorandum of Settlement would be implemented forthwith with all increases effective as of August 1, 1993, the first day of the current collective agreement.

22. The employer has implemented the terms of a memorandum of settlement effective August 13, 1993. The union and the employer met on or about October 7, 1993 and confirmed the details of the Pension Plan to be implemented pursuant to the terms of the memorandum of settle-

ment. At all times during said meeting the employer's conduct was consistent with the existence of a ratified memorandum of settlement and the union did not take any position indicating that it objected to the continued implementation of the memorandum of settlement. Furthermore, the union has processed policy grievances regarding the interpretation, application, and administration of *new* provisions established pursuant to the memorandum of settlement as implemented by the employer effective August 1, 1993.

### The Decision

23. The Act defines a collective agreement as follows:

1.- (1) In this Act,

“collective agreement” means an agreement in writing between an employer or an employers’ organization, on the one hand, and a trade union that, or a council of trade unions that, represents employees of the employer or employees of members of the employers’ organization, on the other hand, containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, the employers’ organization, the trade union or the employees, and includes a provincial agreement.

24. The union acknowledged that the parties have a signed memorandum of settlement and that the sole issue before the Board is whether there has been sufficient “formal ratification” to elevate the minutes of settlement to the status of a collective agreement.

25. The union did not dispute the fact that ratification had occurred on July 25, 1993. Rather, the union asserted that since it had not notified the employer *in writing* of the ratification of July 25, 1993, the Board should conclude that the process was not completed and that the memorandum of settlement had not been elevated to the status of a collective agreement.

26. The union submitted that the Board jurisprudence is unclear on the issue of whether written evidence of ratification is required. The union referred to a line of cases which suggested that the parties must signify their ratification of the memorandum of settlement in writing. (*Civil Service Association of Ontario*, [1971] OLRB Rep. Sept. 596, *Galdino Berdwsco*, [1977] OLRB Rep. Nov. 774.)

27. The Board rejects this argument for two reasons. First, the Board prefers the approach set out in *Graphic Centre (Ontario) Inc.*, [1976] OLRB Rep. May 221, that written evidence of ratification is not required:

13. In a number of cases the Board has been faced with situations where the parties have signed a memorandum of settlement subsequent to which confusion has arisen as to whether ratification has occurred. In certain of these situations the Board has responded to the extrinsic evidence and drawn the inference that ratification has occurred without there being signed evidence of this fact. (See *Versa Services Limited* case [1972] OLRB Rep. Apr. 306, *Service Employees Union Local 210* case *supra*, *Field-Price Limited* case [1973] OLRB Rep. Oct. 543). In other similar situations however the Board has stated that the parties must signify their ratification of the memorandum in writing (see *Marsland Engineering Limited* case *supra*, *Civil Service Association of Ontario* case [1971] OLRB Rep. Sept. 596) in order for there to be a collective agreement within the meaning of the Act. Although each case must be considered within its own circumstances a signed memorandum of settlement coupled with *compelling* evidence of ratification must be considered by the Board as evidence of a collective agreement within the meaning of the Act. Whereas a Memorandum of Understanding subject to ratification is not a collective agreement (see *John Inglis Co. Ltd.* case [1974] 1 Can. LRBR 481 (BC)), evidence which clearly establishes that ratification has occurred elevates the memorandum to the status of a collective agreement within the meaning of the Act. Ratification satisfies the condition precedent thereby giving rise to what is then an unconditional agreement in writing (i.e. signed by the

parties) on all outstanding matters. Although signed evidence of ratification is perhaps the most satisfactory evidence in this regard, the Board cannot ignore other evidence which supports the singular inference that ratification has occurred. ...

(emphasis in original)

28. On the facts set out above, it is clear that the parties signed a memorandum of settlement which was subsequently ratified by the applicant on July 25, 1993. The fact that the ratification was not confirmed in writing is not determinative.

29. The second reason that the absence of written notice is not determinative in this case is that the parties had specifically agreed that notice of ratification would be communicated *orally* by specified union representatives to specified company representatives. Notification of the ratification was given orally by the designated union representatives to the appropriate company representatives.

30. The union further argued that the employer had not proved that it had relied to its detriment on the union's oral notification of the results of the July 25 ratification vote, and therefore the union was not estopped from asserting there was no collective agreement. The union relied on the last sentence of paragraph thirteen of the *Graphic Centre* case, *supra* for that proposition:

It should be added that if the Board were to require signed evidence of ratification in all cases it would be denying the parties use of the equitable doctrine of estoppel in those situations where there is evidence of ratification, other than signed notification which has been relied upon by one or the other of the parties. (See *Garden Lily Laundry Limited* case [1970] OLRB Rep. May 240).

31. The Board rejects this argument. Having reviewed the jurisprudence set out in paragraph thirteen of the *Graphic Centre* case, the Board concludes that the Board's approach of permitting compelling evidence of ratification is not dependent on the doctrine of equitable estoppel. Estoppel is simply a *further* argument that parties may assert in attempting to prove the existence of a collective agreement. Parties do not have to prove detrimental reliance before they can assert that a memorandum of settlement which has been ratified has been elevated to the status of a collective agreement.

32. The Board adopts the following passage from the *Graphic Centre* case as accurately summarizing the underlying rationale for requiring compelling evidence of ratification:

The collective agreement is the cornerstone of our labour relations system. It evidences the existence of bargaining rights and other than during a stipulated period serves as a bar to either the termination or transfer of these rights. It evidences a bargain struck between the parties as to terms and conditions of employment for a term specific and requires that any dispute as to its interpretation, application or administration be resolved by binding arbitration. Its existence or lack thereof can be determinative of the legality or illegality of certain activities engaged in by an employer, a trade union or by employees. The Board in lending an interpretation to section 1(1)(e) has been influenced by both the realities of the collective bargaining process and by the practical need for consistent and easily understood criteria. The parties to collective bargaining do not normally execute a formal document until some time after the bargaining process has been completed. The process is one wherein the agreement of the parties is reduced to a memorandum of settlement subject to ratification by the respective principals which is then followed by the drafting and execution of the formal document. It would not be sound industrial relations policy to require as a condition of entering into a collective agreement the execution of the formal document thereby precipitating an often prolonged extension of the open period. The parties, however, must know, with a high degree of certainty and predictability, precisely when they have entered into a collective agreement so as they may properly assume their respective duties and responsibilities and conduct themselves in a manner consistent with the existence of a

subsisting collective agreement. It should be added that certainty in this regard minimizes the amount of "litigation" which might otherwise come before the Board.

33. In our view this case demonstrates that permitting compelling evidence of ratification (other than written evidence) enhances the parties ability to know with certainty and predictability precisely when they have entered into a collective agreement. On the other hand, requiring evidence of detrimental reliance would only increase uncertainty and hence, litigation between the parties.

34. The union further argued that the unilateral implementation of the collective agreement is not evidence of the existence of a collective agreement. The employer asserted that the union's failure to object to the implementation of the agreement is significant. Further, the employer noted that the union had processed policy grievances regarding the interpretation, application and administration of new provisions established pursuant to the memorandum of settlement. In light of the Board's conclusion that the ratification on July 25, 1993 elevated the minutes of settlement to the status of a collective agreement, the Board does not need to address these alternative arguments.

35. In summary, for the above reasons, the Board responds to the questions referred by the Minister as follows:

(a) there is a collective agreement in effective between the parties;

(b) the term of the collective agreement is from August 1, 1993 to July 31, 1996, as set out in the memorandum of settlement signed by the parties on July 23, 1993.

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**2036-93-U International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 357, Applicant v. Famous Players Inc., Responding Party**

**Strike - Strike Replacement Workers - Unfair Labour Practice - Whether "supervision" of apprentice projectionist constituting bargaining unit work which, when performed by assistant manager transferred to struck location after notice to bargain, violating section 73.1 of the Act - Board finding that operating projection equipment constituting bargaining unit work and that getting work done in a different way not altering characterization as bargaining unit work - Use of assistant manager in this case to supervise apprentice projectionist contravening Act - Employer directed to stop using assistant manager for this purpose and Board remaining seized with respect to any outstanding remedial issues**

**BEFORE:** *R. O. MacDowell*, Alternate Chair, and Board Members *R. M. Sloan* and *B. L. Armstrong*.

**APPEARANCES:** *Larry Steinberg* for the applicant; *Harry Freedman*, *Michael Scher*, *Beth Pierson* and *Brian Holberton* for the responding party.

**DECISION OF THE BOARD;** December 16, 1993

## I

1. In this application the union asserts that the employer has contravened section 73.1 of the *Labour Relations Act*. That section limits the use of replacement workers when employees in a bargaining unit are on a lawful strike. Section 73.1 reads as follows:

73.1-(1) In this section,

“employer” means the employer whose employees are locked out or are on strike and includes an employers’ organization or person acting on behalf of either of them;

“person” includes,

- (a) a person who exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations, and
- (b) an independent contractor;

“place of operations in respect of which the strike or lock-out is taking place” includes any place where employees in the bargaining unit who are on strike or who are locked-out would ordinarily perform their work.

(2) This section applies during any lock-out of employees by an employer or during a lawful strike that is authorized in the following way:

- 1. A strike vote was taken after the notice of desire to bargain was given or bargaining had begun, whichever occurred first.
- 2. The strike vote was conducted in accordance with subsections 74(4) to (6).
- 3. At least 60 percent of those voting authorized the strike.

(3) For the purposes of this section and section 73.2, a bargaining unit is considered to be,

- (a) locked out if any employees in the bargaining unit are locked out; and
- (b) on strike if any employees in the bargaining unit are on strike and the union has given the employer notice in writing that the bargaining unit is on strike.

(4) The employer shall not use the services of an employee in the bargaining unit that is on strike or is locked out.

(5) The employer shall not use a person described in paragraph 1 at any place of operations operated by the employer to perform the work described in paragraph 2 or 3:

- 1. A person, whether the person is paid or not, who is hired or engaged by the employer after the earlier of the date on which the notice of desire to bargain is given and the date on which bargaining begins.
- 2. The work of an employee in the bargaining unit that is on strike or is locked out.
- 3. The work ordinarily done by a person who is performing the work of an employee described in paragraph 2.

(6) The employer shall not use any of the following persons to perform the work described in paragraph 2 or 3 of subsection (5) at a place of operations in respect of which the strike or lock-out is taking place:

1. An employee or other person, whether paid or not, who ordinarily works at another of the employer's places of operations, other than a person who exercises managerial functions.
2. A person who exercises managerial functions, whether paid or not, who ordinarily works at a place of operations other than a place of operations in respect of which the strike or lock-out is taking place.
3. An employee or other person, whether paid or not, who is transferred to a place of operations in respect of which the strike or lock-out is taking place, if he or she was transferred after the earlier of the date on which the notice of desire to bargain is given and the date on which bargaining begins.
4. A person, whether paid or not, other than an employee of the employer or a person described in subsection 1 (3).
5. A person, whether paid or not, who is employed, engaged or supplied to the employer by another person or employer.

(7) The employer shall not require an employee who works at a place of operations in respect of which the strike or lock-out is taking place to perform any work of an employee in the bargaining unit that is on strike or is locked out without the agreement of the employee.

(8) No employer shall,

- (a) refuse to employ or continue to employ a person;
- (b) threaten to dismiss a person or otherwise threaten a person;
- (c) discriminate against a person in regard to employment or a term or condition of employment; or
- (d) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of the person's refusal to perform any or all the work of an employee in the bargaining unit that is on strike or is locked out.

(9) On an application or a complaint relating to this section, the burden of proof that an employer did not act contrary to this section lies upon the employer.

[emphasis added]

2. As will be seen, the date of the "notice to bargain" provides a reference point for calculating who the employer can and cannot use as a "strike replacement". There are limitations on the use of persons transferred to the "struck location" *after* the union has begun the bargaining process by sending its notice to bargain.

## II

3. The company operates two theatres in Kitchener, Ontario, known as the King's College Square Cinema, and the Capital Theatre. The two theatres employ a number of workers, including: projectionists, ushers, doorpersons, box office staff, and miscellaneous service employees. There is also a small complement of managerial personnel which currently includes: Darren Phillips, Christina Knudsen, Nicole Mayer, and A. Texeira.

4. Darren Phillips is currently employed as an "assistant manager". He has a first-class projectionist's licence which, under the *Theatres Act*, entitles him to operate projection equipment; however, he is not employed as a projectionist and his ordinary duties do not encompass the oper-

ation of a projector. The projectionists can and do run the equipment on their own, without Mr. Phillips' assistance, instructions, or supervision.

5. At the time of the notice to bargain, Mr. Phillips was working as an assistant theatre manager in Toronto. He was not employed as a projectionist nor working in Kitchener. The parties are agreed that because Mr. Phillips was transferred to Kitchener after the notice to bargain was given, he is not a managerial person entitled to perform bargaining unit work during a strike.

6. Christina Knudsen is also an assistant manager in Kitchener. She holds an apprentice projectionist's licence that permits her to operate projection equipment "under the direct supervision" of another licensed operator. Ms. Knudsen has worked in Kitchener since January 1992, but she has not worked as an apprentice projectionist, nor operated projection equipment as part of her regular duties. However, because she was on site prior to the notice to bargain, she is not caught by the "transferee limitations" of section 73.1. Unlike Mr. Phillips, she is allowed to do bargaining unit work during a strike.

7. The two theatres in Kitchener operate under the auspices of the *Theatres Act*, which regulates various aspects of the theatre business. That Statute imposes these restrictions:

23. No person shall,

- (a) operate a projector designed for the use of standard film; or
- (b) operate a projector in a Class A or C theatre;

unless the person is licensed as a projectionist under this Act and no licensee, manager or person in charge of a Class A or C theatre shall permit any person to operate a projector in the theatre unless the person is licensed as a projectionist under this Act.

24. Projectionist licences are classified as first class, second class and apprentice.

\* \* \*

#### (REGULATION)

10. A holder of an apprentice licence shall only operate projection equipment designed for the use of standard film in a theatre under the direct supervision of a projectionist holding a licence as a first-class projectionist or a second-class projectionist.

8. We were told that these regulations are something of an anomaly, stemming from an era when employees needed significant skills to operate projection equipment, and there was some risk to the operator and the public. We were told that times have changed: technical innovations have eliminated both the risks and skill requirements. Today, projectors are safe and relatively simple to operate, so that some provinces have discarded the licensing restrictions formerly in place.

9. But Ontario has not. In Ontario, certain equipment can only be operated by a licensed employee. In the case of an "apprentice", the equipment can only be operated "under the direct supervision" of a first or second-class projectionist. The equipment cannot be run by unlicensed personnel, and an apprentice cannot run the equipment without supervision.

10. The regulations do not define what the required "supervision" of apprentices might entail; but presumably it involves what we might describe as "operational supervision". The projectionist monitors, instructs and corrects the apprentice, to ensure that the equipment is being operated in a safe and appropriate manner. This supervisory function is related to the superior

knowledge and experience of the projectionist, which s/he is expected to impart to the apprentice. It is linked to training and skill, rather than “managerial” authority as that term is used in section 1(3) of the *Labour Relations Act*.

### III

11. The union represents the projectionists who work at the employer’s two theatres in Kitchener. The bargaining unit consists of two regular employees (one for each theatre). There is also a third, casual employee, who fills in, from time to time, when the regular projectionist is unavailable.

12. The union’s bargaining rights are confined to the projection booth. The other theatre employees are unrepresented.

13. Ordinarily, there is only one company employee in the projection booth: the licensed projectionist, who operates the equipment, and does miscellaneous related tasks, including minor maintenance and adjustment, inspection, replacement of defective parts, housekeeping, paper work, and so on. No one else is employed by the company to undertake these tasks. They are performed exclusively by the licensed projectionist, who is the only “bargaining unit employee” in the theatre.

14. The company does not employ apprentice projectionists. Indeed, the union has not permitted the company to select and train apprentices, or to place other employees in the projection booth for training purposes. When the company wishes to train its own staff, it must do so at another location, away from the bargaining unit, using instructors who are not members of the union.

15. Because the company has not been permitted to hire or use apprentices for operating purposes, the projectionist members of the bargaining unit have never been required by the company to “supervise” apprentice employees. That has not been part of their job functions.

16. This is not to say that there have never been persons in the projection booth who are being trained or supervised by the projectionist. This does happen from time to time. But these individuals have not been employees of the company, nor have they been persons selected by the company for training. They have been “outsiders”, chosen for apprenticeship training by the union, and permitted to be present in the projection booth by virtue of Article 10.01 of the collective agreement:

**10.01** The Union has the right to place apprentice(s) in any theatre(s) covered under this Agreement for the purpose of training. Only apprentices recognized and approved by the Union will be allowed in the Projection suite for training as Projectionists. The names of all proposed Projectionist trainees shall be submitted to the Employer in writing who for reasonable cause conveyed to the union in writing shall have the right to refuse any nominee, subject to Article 6.

[emphasis added]

These persons are there at the behest of the union, not the company; and while there is a possibility that they may be eligible for employment at some time in the future, there is no settled arrangement in this regard.

17. In summary, the training or supervision of apprentices has not been a function which the company has been permitted to require of bargaining unit members, or which bargaining unit members have undertaken on the company’s behalf. Projectionists have not been directed by the company to do this “work” or paid specifically to do this “work”. However, this “work” has been

done on company premises and company time by bargaining unit members who were being paid while they were doing it; and no one else has done it at the Kitchener locations.

18. The union and the company were parties to a collective agreement which expired on January 7, 1993. That collective agreement contains a number of clauses which describe, or relate to, the work of the bargaining unit:

#### UNION RECOGNITION

- 2.01 The Employer recognizes the Union as the sole and exclusive bargaining agent for motion picture machine operators (employed by the Employer) within the territorial jurisdiction granted to the union by the International Alliance of Stage Employees and Motion Picture Machine Operators of the U.S. and Canada.

\* \* \*

#### MANAGEMENT RIGHTS

- 3.05 A projectionist will present to the Employer film inspection reports, performance interruption reports, payroll time sheets, requisition for supplies form, booth inventory report, maintenance log and other relevant reports when requested by the Employer for the proper operation and administration of the projection suite. Such reports will be performed during regular hours or other paid hours where possible. If a projectionist is required to complete reports outside of the Regular and paid hours the service and repair rate will be paid with a two hour minimum.

#### UNION SECURITY

- 4.01 The Employer agrees to employ only motion picture machine operators and stage employees supplied by Local 357 and further agrees to only employ members of the Union who are in good standing. It is, however, the responsibility of the Union to inform the Employer if a member is not in good standing.
- 4.02 The Union agrees to supply competent and efficient Projectionists and stage employees to perform work as required by the Employer under the provisions of this Agreement. Both parties agree to make every effort not to permit employees covered by this Collective Agreement to contravene the provisions of the Employment Standards Act in complying with this Agreement.

#### JURISDICTION

- 5.01 All moving picture projection equipment, video projection equipment, satellite receivers, laser projection equipment, television and telemeter operation and other electronic equipment including the projection of all films of every kind and character regardless of size, in theatres and places (excluding telemeter, television and video tape equipment situated in the lobby and areas adjacent to the theatres and places for which no separate admission may be charged) in which the EMPLOYER now or hereafter may maintain within the jurisdiction of Local 357 is subject to all terms of this Collective Agreement herewith set forth. All such equipment and other theatre equipment requiring operation by a projectionist shall be manned only by members of this Union. This shall include all premises of the EMPLOYER, directly or indirectly, where motion pictures are projected or run and shall include any image or sound which is projected by any use of film, screen or otherwise. It is understood and agreed that the EMPLOYER will recognize and employ members of the Union.
- 5.02 The Union shall supply persons to construct, install and erect stage equipment, such as screens, screen frames, screen maskings, curtains, curtain travellers and lines, draperies and acoustics, and shall construct, install and erect all scenery used on stage or within the premises of the theatres or theatres owned or operated by the Employer or its subsidiaries within the aforementioned jurisdiction. The number of persons

required shall be negotiated and mutually agreed upon between the Employer and the Union's business agent or authorized Representative.

- 5.03 All stage lighting and equipment used for the presentation of stage shows shall be installed and operated by members of Local 357 as referred to hereinbefore. There shall be a minimum three (3) hours for each of the take-in, performance and take-out, with the wage to be negotiated when required.
- 5.04 When a contractor or sub-contractor is to install any equipment as outlined in clauses 5.01, 5.02, 11.14, 11.15, 11.16, or is to carry out any of the aforementioned work in any theatre or theatres owned or operated by the Employer or its subsidiaries, the union shall be notified forty-eight (48) hours in advance, whenever possible, and will supply members as required pursuant to the above clauses.

\* \* \*

#### 9.05 COMPONENTS OF GROSS EARNINGS

REGULAR HOURLY earnings  
 ADDITIONAL TIME earnings  
 PUBLIC HOLIDAY premium  
 PUBLIC HOLIDAY ADDITIONAL TIME  
 MORNING OPERATIONS earnings  
 EXTRA MATINEE earnings  
 CONTINUOUS OPERATIONS earnings  
 LATE OPERATIONS earnings  
 SERVICE & REPAIRS earnings  
 EQUIPMENT INSTALLATION earnings  
 MAKE-UP & BREAKDOWN earnings, if any  
 PREPARATION TIME (This shall form part of the Regular Hours)

\* \* \*

#### 11.14 Service and Repairs

No inspection, transmission tests, sound service or repair work on equipment, as outlined in Article No. 5.01, may be performed in the booth without the presence of the regular Projectionist. The Regular Projectionist will be made available and paid at the Service and Repair Rate detailed in Appendix "A" of the theatre involved, with a two hour minimum, without Pension deductions and contributions and without Health and Welfare Benefit deductions or contributions. The two (2) hour minimum will not apply where the hours worked are contiguous to the REGULAR HOURS or other paid hours.

#### 11.15 Equipment Installation (Existing Theatres)

For any major installation, replacement or modification of equipment, as detailed in Article 5.01, in an existing theatre, the Regular Projectionist will be made available to perform such work as is required and he/she will be paid at the SERVICE AND REPAIR HOURLY RATE, as detailed on Appendix "A" of the theatre involved, with a 2 hour minimum, without Pension deductions and contributions and with Health and Welfare Benefit deductions or contributions. The two (2) hour minimum call will not apply where the hours worked are contiguous to the REGULAR HOURS or other paid hours.

#### 11.16 Equipment Installation (New Theatre)

If the EMPLOYER develops a new theatre requiring the installation of equipment, as detailed in Article 5.01, the UNION will be notified and will provide a competent employee to perform such work as is required. The UNION will advise the EMPLOYER, in writing, the name(s) of the regular Projectionist(s). The total cost to

the EMPLOYER for such equipment installation work will not exceed two (2) weeks REGULAR WEEKLY BOOTH COST of the theatre involved subject to the prevailing applicable benefits, regardless of the number of Projectionists supplied by the UNION or the number of hours worked by the Projectionist(s).

\* \* \*

**14.02 Film Carrying**

The projectionist will not be required to carry film to and from the projection suite, except to the extent that there are no other employees of the employer capable of doing so within the theatre, or if an emergency arises.

[emphasis added]

19. The agreement reserves bargaining unit work to union members of the bargaining unit, and describes that work in a variety of ways - including by reference to types of equipment. The work is described generically, in accordance with the union's traditional craft jurisdiction and work claims - even though the employer may not have the particular equipment contemplated by the agreement. (See, for example, Article 5.02.)

**IV**

20. On November 26, 1992 the company gave the union notice of its desire to bargain a new collective agreement. That notice set in motion the collective bargaining process regulated by the Act. The date of the notice also provides the reference date for some of the restrictions imposed by section 73.1.

21. Following the notice to bargain, the parties met on a number of occasions between April 1993 and September 1993 in an effort to conclude a new collective agreement. They were unable to reach agreement. On September 2, 1993 the membership of Local 357 voted 21-2 to authorize a strike. All members of the Local voted - not just the two employees working for Famous Players.

22. No objection is taken to the result of this strike vote or the manner in which it was conducted.

23. On September 3, 1993 the Minister of Labour advised the parties that he had decided not to appoint a conciliation board. Subsequent mediation efforts did not resolve the collective bargaining impasse. A lawful strike began on Monday, September 20, 1993.

24. Once the strike began, the company decided to close the Capital Cinema. It has continued to operate the cinema at King's College Square. The way in which it has done so gives rise to the present proceeding.

25. The union's complaint involves three distinct areas of concern:

- (1) the activities of Mr. Phillips at the beginning of the strike, when he operated the projection equipment and performed the ancillary functions ordinarily done by a bargaining unit projectionist;
- (2) the activities of a subcontractor whose employees were installing or upgrading the projection equipment, and, while so doing, performed some incidental work that a projectionist normally does;

- (3) the activities of Ms. Knudsen and Mr. Phillips who, together, continue to run films on the projection equipment - with Ms. Phillips, the apprentice, doing the actual operation of the projector, and Mr. Phillips, with his first-class licence, providing the "supervision" required by the Regulations under the *Theatres Act*.

The union's primary concern is Item 3, because without Mr. Phillips and Ms. Knudsen to run the equipment, the theatre would not be able to stay open.

26. The employer concedes that some of the activities described in items 1 and 2 above, involve a breach of section 73.1 of the Act; however, the employer submits that these are isolated "technical" violations, arising from the local manager's ignorance of the new law. Any improper conduct came to an end prior to the hearing, and is unlikely to be repeated. Counsel submits that, in the circumstances, no remedy is necessary or appropriate. The company denies that its current mode of operation involves any breach of section 73.1, because, it argues, "supervising" an apprentice (what Mr. Phillips is doing) is not, and never has been, "bargaining unit work", and Ms. Knudsen is permitted to do bargaining unit work.

27. It will be convenient to examine these situations one by one.

#### **Mr. Phillips' Activities at the beginning of the Strike**

28. The strike began on Monday, September 20. When the projectionist did not report for work by the time the show was to begin, Mr. Phillips threaded the film into the projector and pushed the start button. Since the system is automated, there was little else for him to do. There is no dispute, however, that on Monday, September 20, Mr. Phillips performed the work ordinarily done by a bargaining unit projectionist - including the operation of the projector and any ancillary duties. He did the same work on Tuesday, September 21, and for the early evening show on Wednesday, September 22.

29. Late in the day on Wednesday, September 22, Mr. Phillips was advised by his superiors that he was not permitted to do bargaining unit work and should stop doing so. Since that time (with one exception) he has not touched the projector or the film. It seems clear, however, that on September 20, September 21, and September 22, Mr. Phillips' conduct was contrary to section 73.1 of the *Labour Relations Act*, and we so declare.

30. Should the Board go further and issue a cease-and-desist direction? The company submits that such direction is unnecessary because the illegal conduct has ended and will not be repeated. But even after the warning and instructions from senior management, Mr. Phillips handled some film in circumstances which, again, involved his doing bargaining unit work and which triggered a further complaint from the union and admonition from his superiors, instructing him not to do so. And Mr. Phillips (on behalf of the employer) has continued to contravene the Act in other ways which were ongoing at the time of the hearing (see below). In the circumstances, the Board considers it appropriate to supplement management's instructions with its own cease-and-desist direction, ordering Mr. Phillips not to do bargaining unit work, and prohibiting the company from further contraventions of section 73.1.

#### **The Activities of the Subcontractor and its Employees**

31. The company has a long-standing commercial relationship with a firm known as "General Sound". General Sound is engaged, as necessary, for the installation, repair or maintenance of projection equipment. When there is work of this kind to be done, General Sound is retained, and

performs that work with its own technical employees. Those technicians are also members of IATSE, with which General Sound has a collective bargaining relationship.

32. After the commencement of the strike, it was necessary to install new “platters” on the projection equipment, as part of a systems upgrade. The work was done by two technicians (members of a sister IATSE local), and a technical supervisor. The work took about six and a half hours to complete.

33. No objection is taken to the installation of the new equipment or the modification work in which the technicians were engaged. It is acknowledged that this is the kind of work that they normally do, and that it is not ordinarily done by a bargaining unit projectionist. At the very least, it is work which the technicians are entitled to do, and the union makes no complaint about it.

34. The problem arises because when work of this kind is undertaken, Article 11.15 of the collective agreement provides that “the regular projectionist will be made available to perform such work as is required and he/she will be paid at the service and repair hourly rate .... with a two-hour minimum ....”. Similarly, when service or repairs are to be done, the regular projectionist is to be present and “made available”.

35. This stand-by provision is primarily intended to protect the projectionist from income loss, and does not entail any specific obligation to do particular work; moreover, as a practical matter, the projectionist’s role has been limited to “helping out” the technician, to the extent that the technician considers it necessary. Since the technician and the projectionist are members of the same union, and are both being paid for their time, they ordinarily do help each other out. But such assistance is rendered on an entirely fluid and flexible basis, which involves no precise work definition, work limitations, or work obligations.

36. All that can be said, therefore, is that if there had not been a strike, the regular projectionist would have been available, and probably would not have been totally idle for the six hours or so, that the technicians were working in the projection booth. In all likelihood, the projectionist would have helped out as he has done in the past. But it is quite impossible to say what work or how much work he would have done. The fact is, there is an overlap of employee functions which cannot be unraveled and was never considered relevant prior to the passage of section 73.1.

37. In the circumstances, while there may well have been some minor contravention of section 73.1, the Board sees no purpose in making such declaration or making any remedial direction.

#### **The Working Relationship of Ms. Knudsen and Mr. Phillips**

38. Since Wednesday, September 22, Mr. Phillips has not actually operated the projection equipment, nor, after some initial instruction, has he told Ms. Knudsen how to do so. As we have mentioned above, Ms. Knudsen already has an apprentice projectionist’s licence and knows, in a general way, how to operate the equipment. The operation of the projector may not be as simple as “threading the film and pushing the buttons”, but the task is not a difficult one, so long as the equipment does not malfunction, and does not need any significant adjustment.

39. But whatever Ms. Knudsen’s abilities may be, and whether or not she is able to operate the equipment entirely on her own, the fact is, Mr. Phillips is the only employee with the technical skills to provide any supplementary advice or assistance that she may require; and, more significantly, he is the only person able to provide the “supervision” of an apprentice *that is required by the Theatres Act*. If Mr. Phillips cannot “supervise” Ms. Knudsen, Ms. Knudsen cannot run the projector by herself - even if she has the technical knowledge and mechanical ability to work with-

out supervision - because the *Theatres Act* prohibits her from doing so. And if Ms. Knudsen cannot run the projector, there is no one else on site able to do so.

40. Is this kind of “supervision” to be considered “bargaining unit work”, which Mr. Phillips is prohibited from doing? The company claims that it is not bargaining unit work, because “supervising” apprentice employees is not something that bargaining unit employees have done in the past, and is not work specifically described in section 5 of the collective agreement. Counsel asks parenthetically: if the “supervision” function is not work claimed in the collective agreement, is not work that bargaining unit employees have actually done for their employer in the past, and is not work which the union will even permit bargaining unit employees to do (because the employer cannot use apprentice employees), how can it be “bargaining unit work” within the meaning of section 73.1?

41. The answer, we think, lies in a purposive reading of section 73.1, and an appreciation of the way in which the section is structured to achieve that objective.

42. The purpose of section 73.1 is to inhibit a struck employer’s ability to carry on business. The Legislature has decided that it is appropriate to enhance the union’s power to wage a successful strike, by limiting the means open to an employer to resist. When bargaining unit members withdraw their labour, the employer is prohibited from drawing upon specified pools of replacement labour (bargaining unit members who don’t support the strike and may wish to work, employees from other locations, managers from other locations, transferees after the notice to bargain is given, the employees of a subcontractor, volunteers, etc.). Section 73.1 is not confined to “strike breakers” in the traditional sense. It encompasses a wide variety of potential sources of substitute labour. It is substitute labour or “replacement workers” that is the focus of the section, and it is in that light that one must consider the concept of bargaining unit work: the Statute prohibits employers from using replacement workers to get the strikers’ job done.

43. We agree with company counsel that the collective agreement and past practice may provide considerable assistance in determining “the work of an employee in the bargaining unit that is on strike ...”. But we do not think that these sources are necessarily conclusive. Nor do we think that the Statute requires a minute or abstract examination of every function performed by bargaining unit employees in the past.

44. The fact that a function is specified in the collective agreement is persuasive evidence that the particular function should be considered the work of bargaining unit members (although perhaps not exclusively). Similarly, past practice may provide some useful guidelines: the “work of employees in the bargaining unit” is what employees, in the past, have customarily done. But the impact of a strike may well prompt an employer to modify the way in which work is performed, so that there may not be an exact correlation with what went before. Individuals may be doing “the work of employees in the bargaining unit” within the meaning of section 73.1, even though the work might not have been done that way before.

45. A hypothetical example may illustrate what we mean.

46. Suppose the employer’s operation required employees to handle material and move boxes. Suppose that they ordinarily did that work by using motorized lift trucks, and that there is a “lift truck driver” rate in the collective agreement. Clearly the operation of a lift truck would be considered bargaining unit work. But so is moving boxes. Thus, if the employer hired six new workers during a strike to move the boxes manually, that would still be “bargaining unit work”, even though members of the bargaining unit may not have performed that precise function before.

47. In our view, the Statute requires a more general or common-sense approach, bearing in mind that section 73.1 is designed to prohibit the substitution of replacement labour for that of bargaining unit members. With that in mind, it is easy to conclude, quite simply, that “the work” of an employee in a projectionists’ bargaining unit is the operation of projection equipment.

48. What one needs to operate projection equipment, lawfully, is a set of skills that can be applied to the job at hand, and a licence that permits such application. Prior to the strike, the legal, physical and intellectual capacity to do the job were combined in a single person, whereas now, the company is seeking to have the projector run by two persons: Ms. Knudsen who is doing the physical work, and Mr. Phillips who is providing the operational supervision required by the Statute. Ms. Knudsen and Mr. Phillips, together, are doing the work of the striking projectionist: operating the projector in a safe and efficient manner in accordance with the law.

49. Ms. Knudsen is entitled to be a strike replacement. She was on the premises prior to the notice to bargain. But Mr. Phillips is prohibited from doing “the work of an employee in the bargaining unit that is on strike”.

50. However, even if we were to confine the analysis to the past practice and the terms of the collective agreement, we would still conclude that supervising apprentices is the work of the bargaining unit within the meaning of section 73.1.

51. There is no doubt that supervising apprentices operating the company’s equipment has been done before, by bargaining unit projectionists. This is a recognized function which projectionists are entitled to perform while on the job and while they are being paid by the company (see Article 10.01 of the collective agreement). Nor is there any doubt that *if* the company engaged apprentices, a bargaining unit person would be responsible for their “supervision”. Managerial personnel like Mr. Phillips would not have that responsibility. Finally, we should note that the agreement requires the union to supply competent and efficient projectionists (Article 4.02), and in order to meet that obligation, the union may have to train and supervise prospective employees in precisely the same way that Mr. Phillips is now monitoring Ms. Knudsen. Indeed, that is why projectionists have provided such training: so the union can send competent personnel when requested to do so by this employer or others.

52. Against that background, we find it difficult to accept the employer’s contention that what Mr. Phillips is now doing, is not part of the work of an employee in the bargaining unit. The fact that the employer is trying to get that work done in a different way, using managerial personnel, does not alter its characterization as bargaining unit work.

53. For the foregoing reasons, the Board concludes that the employer is not permitted to use Mr. Phillips to supervise Ms. Knudsen’s operation of the projection equipment. Such use contravenes section 73.1 of the Act.

54. The employer is therefore directed to immediately stop using Mr. Phillips in this capacity and for this purpose. No order is made in respect of Ms. Knudsen because her activities do not contravene the *Labour Relations Act* and the Board has no authority to enforce the *Theatres Act*.

55. The Board will remain seized with respect to any outstanding remedial issue attributable to the above-described breaches of section 73.1 of the Act.

#### **DECISION OF BOARD MEMBER R. M. SLOAN; December 16, 1993**

1. I dissent from the majority decision.

2. For the majority decision to find that while Ms. Knudsen has the right under the Act to perform bargaining unit work during the course of the strike but she is nevertheless prohibited from exercising that right because she is not being supervised by a striking member of the bargaining unit, is difficult to understand and accept.

3. It is an agreed upon fact that bargaining unit projectionists have never supervised or trained apprentice projectionists who were employees of the company and indeed would never be expected to exercise such function under the provisions of the collective agreement nor as part of their regular job duties. How can the Board conclude that work that has never been done by bargaining unit members in relation to fellow employees is somehow bargaining work?

4. The supervision and training of employees, including the bargaining unit projectionists when at work, rests solely with company management, and it is in the exercising of these functions that Mr. Phillips supervises the work activities of Ms. Knudsen. It is clear that under no circumstances could the supervisory functions performed by Mr. Phillips in his working relationship with Ms. Knudsen from September 23rd. onward constitute the performance of bargaining unit work.

5. The Position Description Guidelines filed by the respondent at the outset of this hearing, for the job of Assistant Manager - the position currently held by Mr. Phillips - clearly states under Sec. II - Responsibilities and Duties that the Assistant Manager:

2.b) Hires and supervises theatre staff to maintain well groomed, trained and mannered and motivated employees.

6. Of prime significance, in my view, is the fact that Ms. Knudsen is not an apprentice in training as defined under section 10.01 of the collective agreement. She is assigned to the job in the projection suite solely by the employer exercising its rights under the Act and she should be permitted to continue performing the projectionist function. The supervision issue in my view, is irrelevant and immaterial to the matter at hand.

7. If in fact the Kings College Square Cinema is shut down as a result of the majority decision it will create serious employment problems for the majority of the employees at this location who are not represented by I.A.T.S.E. or for that matter any other trade union.

8. Those employees performing the jobs referred to in paragraph 5 of the majority decision will be faced with a loss of employment due to the strike action of a single employee at this location - surely this is wrong, and something the Board can properly take into account when interpreting section 72.1. Are the rights of independent or unrepresented employees to earn a living to be abrogated regardless of fairness and cost? Is such a disproportionate impact beyond the discretion of the Board to rectify? In my view, at the very best, the section must be strictly construed against this unjust result. If it is not the intent of the legislation to put out of work a majority of the employees who are not participating in the work stoppage, and I believe this to be the case - then the Board should exercise its discretion to overcome this unjust result.

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**0014-93-U Susan Forbes, Applicant v. The Simcoe County Roman Catholic Separate School Custodians, Responding Party v. The Simcoe County Roman Catholic Separate School Board, Intervenor**

**Discharge - Duty of Fair Representation - Remedies - Trade Union - Trade Union Status - Unfair Labour Practice - Applicant claiming that Association's failure to advance discharge grievance to arbitration violating the Act - Board rejecting assertion of Association and employer that Association not a trade union within the meaning of the Act - Board finding that Association violating its duty to applicant under section 69 of the Act by never turning its mind to merits of applicant's case - Association directed to consider merits of applicant's case, to conduct any investigation it feels appropriate, and to advise applicant within specified period of what it intends to do and the reasons for its decision**

**BEFORE:** *Bram Herlich*, Vice-Chair.

**APPEARANCES:** *C. J. Abbass* and *Susan Forbes* for the applicant; *Joseph N. Tascona*, *Petra Vanderley* and *Leo Joyce* for the responding party; *John W. Woon*, *Michael P. Fitzgibbon*, *Sandra L. Bickley* and *Steven Hudson* for the intervenor.

**DECISION OF THE BOARD;** December 21, 1993

1. This is an application filed pursuant to section 91 of the *Labour Relations Act* in which the applicant, Susan Forbes, alleges that the responding party (also referred to as the "Association") has violated section 69 of the Act. The claim arises from the applicant's discharge from her employment with the intervenor (also referred to as the "employer") and the Association's subsequent refusal, in circumstances which will be described more fully, to advance a grievance challenging that discharge to arbitration.

2. Both the Association and the employer asserted that the Association was not a trade union within the meaning of the Act and that the statutory obligations set out in section 69 of the Act consequently did not apply to the case at hand. On that basis they argued that the application ought to be dismissed. Although this issue was initially described as a preliminary matter, the parties agreed to adduce their evidence relating to both this issue and the merits of the complaint at the same time. The parties filed a written Agreed Statement of Facts (although there were some residual disputes regarding a few of the facts outlined therein). The Board also heard the oral evidence of the applicant and of Leo Joyce, who was the vice-chairman and, subsequently, chairman of the Association during the time relevant to Ms. Forbes' complaint. In addition, 51 documents were marked and filed as exhibits in these proceedings.

3. As evidenced by the parties' ability to produce an agreed statement of fact (although subject to some qualifications), the essential facts giving rise to this matter were not in serious dispute. There were, however, significant differences in the characterizations and legal conclusions the parties urged should flow from those facts. To the extent that I have had to resolve any conflicts in evidence in arriving at my findings of fact I have carefully considered all of the evidence before me and have taken into account such factors as: the demeanour of the witnesses when giving their evidence, the clarity and consistency of that evidence when tested in cross-examination, the witnesses' ability to recall events and resist the tug of self-interest in shaping their answers, and what seems most probable in all the circumstances.

4. The parties' Agreed Statement of Facts reads as follows:

**AGREED STATEMENT OF FACTS****Trade Union Status**

1. The Labour Relations Board has not granted the Respondent trade union status under s.1(1) of the *Labour Relations Act*;
2. The Respondent is an informal association established in 1969 in relation to custodians and cleaners employed by the Board;
3. The Respondent [both the Association and the employer asserted that this reference to "The Respondent" should read "A committee of the respondent"] and the Board have entered into agreements in relation to certain terms and conditions of employment and compensation since 1970. The Board's relationship with the Respondent is set out at *ARTICLE II - RECOGNITION* of the present agreement:  
  
"2.01 The Board recognizes the Custodians Committee as the regular and official committee empowered to represent all the Custodians employed by the Board and to negotiate on their behalf."  
  
4. On November 25, 1976, custodians in attendance at a meeting voted for the continuation of a social committee and to initiate a social fund.
5. The Respondent's Constitution and Bylaws enacted on September 23, 1977 and updated on March 19, 1987, provides under *Article 2 - Aim and Objectives* the following:  
  
"(a) To arrive at by group discussion and interchange of experience, measures by which the Custodians may offer the Board more informed and professional service;  
  
(b) To keep its members informed and educated by comprehensive and progressive study of custodial requirements and to establish, as far as possible, reasonable standards of efficiency;  
  
(c) To work in co-operation with other groups on common problems."  
  
6. The Respondent does not require through either its Constitution and Bylaws or agreement for custodians and cleaners employed by the Board to become members of its organization.
7. Custodians and cleaners employed by the Board may authorize deductions from salary to be paid to the Respondent's social fund. The Complainant signed a Memorandum of Authorization dated May 4, 1988, but not all custodians and cleaners employed by the Board have done so.

**Susan Forbes**

8. Susan Forbes (hereinafter called the "Complainant") was employed by the Simcoe County Roman Catholic Separate School Board (hereinafter called the "Board") from approximately September 8, 1987 until her termination on December 30, 1991.

9. On May 4, 1988 the Complainant signed a Memorandum of Authorization which allowed the Board to deduct from her salary \$5.00 as an initial contribution and \$2.00 per month. The monies collected in this manner are then used as a social fund by the Respondent.
10. On October 29, 1991, the Complainant was charged under the *Criminal Code* by the Alliston Detachment of the Ontario Provincial Police with theft under \$1,000.00. This charge arose from the theft of \$29.00 from a purse left in the school lounge at Father O'Reilly School by the Principal of the school.
11. By letter, dated October 29th, 1991, the Complainant was "suspended with pay" pending an investigation by the Board into allegations of theft. The Complainant is alleged to have stolen approximately \$30.00 from a purse intentionally left in the staff-room as a trap on October 28th, 1991, while working as a custodian at the F.X. O'Reilly School in Tottenham, Ontario. The money had been dusted with identification powder. The Complainant had worked a full day's shift, 8:00 a.m. - 4:05 p.m. cleaning and emptying waste baskets when she was called into the office. There was dusting powder found on her hands. She did give a statement to the police admitting the theft, which she alleges was given under duress and is not true. On the afternoon of October 29th, 1991, the Complainant had a meeting at her home with Sandy Bickley and Donna Folz (management of the Board) and Leo Joyce (Custodian Committee) and Bill Annand (Custodian Co-ordinator) [while conceding that this was Mr. Annand's title, the applicant did not agree that he was acting in that capacity] concerning her termination, where she denied her guilt and advised the group that she was intending to plead not guilty and fight the charge.
12. By a letter, dated November 1st, 1991, the Board suspended the Complainant "without pay" effective November 2nd, 1991, pending disposition of the criminal charge laid in regard to the alleged theft.
13. On November 11th, 1991, the Complainant grieved her suspension under the grievance procedure provided in Article XI.
14. The agreement between the Board and Respondent provides at *ARTICLE XI - GRIEVANCE PROCEDURE* the following:
  - "11:01 It is the mutual desire of both the Board and the Custodians that all grievances shall be adjusted as quickly as possible at the lowest administrative level.
  - 11:02 A grievance is a claim by a Custodian, a group of Custodians or the Board relating either to the interpretation, application, administration or allegation that the Agreement has been contravened.
  - 11:03 Individual grievances shall normally be settled in the following manner and sequence:

Step - Informal Stage

- A. The Custodian having a complaint arising out of this Agreement shall first approach the Manager of Custodian Services.
- B. The Complaint must be received within ten (10) working days after the Custodian becomes aware of the circumstances giving rise to the complaint.
- C. The Manager of Custodian Services shall reply verbally within three (3) working days after receipt of the complaint. Failing satisfaction with the verbal reply of the Manager of Custodian Services, the complaint shall become a grievance and may proceed to Step 2.
- D. The complainant may be accompanied by a representative of the Custodian Committee.

Step 2 - Formal Stage

Failing satisfaction with the reply in Step 1, then within five (5) working days of receipt of the reply, the grievance shall be submitted in writing to the Director of Education or designate. The Director of Education or designate shall reply in writing within ten (10) working days of receipt of the grievance. Failing satisfaction, the grievance may proceed to Step 3.

Step 3 - Last Stage

- A. Failing satisfaction with the reply in Step 2 above, then within five (5) working days of receipt of the reply, the grievance shall be transmitted in writing to the Board of Trustees together with a request for a hearing with a Committee of the Board. The Board of Trustees shall reply in writing within ten (10) working days of receipt of the grievance. Should the grievance not be settled to the satisfaction of the griever, then the grievance may proceed to arbitration as governed by the Arbitration Act of Ontario.
  - B. The complainant may be accompanied by either a representative or representatives of the Custodian Committee."
15. At the time the grievance was filed, the Complainant was a director with the Respondent.
  16. On November 13th, 1991, the Board denied her grievance.
  17. November 15th, 1991, the Custodians [the Association and the employer both asserted that this reference to "the Custodians" should read "the Complainant"] requested a Step II meeting, which was held on December 5th, 1991. The Complainant attended, along with Kathy Kriska, a representative from the Respondent and requested she be reinstated until the criminal charge was tried.
  18. December 5th, 1991, the Board "without prejudice" changed the terms of her suspension effective December 6th, 1991, to "suspension with pay".
  19. December 13th, 1991, the Complainant proceeded to Step III, a hearing with a Committee of the Board, requesting that she be put back to work in a different school.

20. December 17th, 1991, the Board requested an extension of the time for setting up the hearing, which was granted.
21. The Board was advised that on December 18, 1991, Judge Inch of the Provincial Court (Criminal Division) found the Complainant guilty of theft. The Board terminated the Complainant's employment on December 30, 1991 for cause.
22. On January 6th, 1992, the Complainant prepared and filed a grievance as to her termination, requesting reinstatement to suspension without pay, until her appeal was heard.
23. On January 8th, 1992, the Board set up a meeting for January 13th, 1992 in line with 11:03 (b) of the Collective Agreement.
24. On January 13, 1992, the Complainant attended a meeting with Board representatives including, Bill Annand, Custodian Co-ordinator, in which Leo Joyce and John Lalonde, Respondent representatives were present.
25. The Complainant never requested Respondent Chairman, Leo Joyce, to assist her in the preparation of and processing of any grievance. The Respondent only received grievance documents provided to the Board by the Complainant, in which its representatives were copied, but no other documents.
26. On January 16th, 1992, the Board advised that both Complainant's grievances were denied.
27. On March 2nd, 1992, the Board acknowledged the Complainant's request to proceed to Arbitration and asked for the request in writing.
28. On March 10th, 1992, the Complainant wrote to Board, requesting that her grievance proceed to Arbitration.
29. On March 13th, 1992, the Board wrote to the Complainant's lawyer acknowledging the written request to proceed to arbitration and advised of the name of their legal counsel.
30. By letter April 3, 1992, the Board was informed that the Complainant had retained legal counsel in connection with her intention to appeal the conviction referred to in paragraph 21 hereof. It is the Board's understanding that this appeal was either abandoned or dismissed.
31. By letter dated May 27, 1992, the Board was informed that the Complainant had retained legal counsel and of her continued intention to proceed to arbitration under the *Arbitration Act*, R.S.O. 1991, c.17. The Board has not heard anything in this regard from either the Complainant or her counsel in almost one year, therefore it believes

the Complainant has abandoned her intention to proceed to arbitration under the *Arbitration Act*.

32. On July 1st, 1992, the Complainant's counsel wrote to the Respondent requesting confirmation that they would cover their share of the cost of the Arbitration.
33. The Respondent Chairman, Leo Joyce by letter dated July 15, 1992, advised the Complainant's solicitor as follows:

"I am in receipt of your letter requesting an answer as to whether our Custodial Association will cover the cost for an arbitrator, should Susan Forbes grievance proceed to arbitration.

We are sorry, but we do not have the funds to cover this amount. The total contributions from our custodians for one year would not be sufficient to cover the cost of \$3,000.00. Therefore it is the Custodial Committee's decision to say no to this request."

34. The Complainant's solicitor by letter dated November 19, 1992, advised the Respondent Chairman, Leo Joyce as follows:

"On July 15, 1992 you advised me that your association was not prepared to cover the cost of an arbitrator. I understood that the rationale for this decision had to do with lack of funds. Your association is a small one.

As the bargaining agent for Ms. Forbes you are of course obligated to take reasonable steps to protect her interest and you owe her a duty of fair representation. Please be advised that I have now received authority from the Ontario Legal Aid Plan to cover the cost of the arbitrator providing that cost does not exceed \$4,000.00.

Accordingly, I am now requesting that the association proceed to move this matter forward to arbitration. The collective agreement is between the board and the association and not the employee. Please advise me at once whether or not you are prepared to take the necessary steps to move this matter forward."

35. The Respondent Chairman, Leo Joyce by letter dated November 27, 1992, advised the Complainant's solicitor as follows:

"I am in receipt of your letter requesting that our Custodial Association proceed to move Ms. Forbes matter forward to arbitration.

Again, we wish to advise that no steps will be taken to proceed this matter forward. After a meeting with our committee, we have been legally advised that according to our collective agreement, there is nothing to say that we must proceed with this any further."

5. Is the Association a trade union within the meaning of section 1(1) of the Act? The agreed facts set out above with respect to this issue (primarily paragraphs 1-7) were augmented by oral and documentary evidence. The Association's Constitution and Bylaws appear to have been in place since at least 1977. Although its Aims and Objectives section does not include the regulation of relations between employees and employers or other similar collective bargaining purposes one might normally expect to find in a trade union constitution, Article 4 of the Bylaws provides:

#### ARTICLE 4 - NEGOTIATIONS

The Executive Committee shall be the official committee to represent all custodians and clean-

ers employed by the Board and to *negotiate and accept by a majority of the Executive Committee* on their behalf compensation, conditions of employment and other matters relative to the custodians and cleaners as a whole.

[emphasis in the original]

6. The Association's constitutional documents contain other provisions typical of trade union constitutions. For example, officers, their duties and regular election are provided for; regular bi-annual and other meetings are contemplated; and the collection of member fees is regulated (an initial \$5.00 fee and subsequent monthly payments of \$2.00).

7. It was not disputed that since the inception of the Association, it (through the contemplated committee) and the employer have negotiated a series of documents they have described as collective agreements, a number of which were filed in these proceedings. (For the sake of exposition we shall continue to refer to these as collective agreements, although we should note, as the Association and employer both argued, these documents can only be collective agreements under the Act if we are satisfied that the Association is a trade union). The collective agreement in place at the time relevant to the present matter contains a recognition clause already reproduced as well as Article 1 - Intent and Scope, portions of which provide:

#### ARTICLE 1 - INTENT AND SCOPE

- 1:01 The intent and purpose of the Parties is to maintain a harmonious relationship between the Board, each custodian and the Custodian Association and to co-operate to the fullest extent possible in an endeavour to provide the best possible custodial services.
- 1:02 The Parties desire to set forth in the Agreement certain terms and conditions of employment together with a salary schedule which governs the Custodians who are employed under this Agreement.
- 1:03 During the period of this Agreement, its terms shall be applicable to all Custodians.

8. The agreement also contains other provisions regarding subjects typical of collective agreements including matters relating to issues of classification, remuneration (including premium payments), benefits, leaves of absence, holidays, vacations and a grievance procedure. The agreement does not expressly prohibit strikes or lock-outs during its currency. It was not disputed that the Association has never called a strike or, prior to the events giving rise to the present complaint, been involved in a grievance or arbitration. We heard no evidence regarding whether or not the Association and the employer have ever sought the appointment of a conciliation officer or had a "no board" report. Similarly, while documents were filed indicating that the two most recent (for our purposes) collective agreements appear to have been filed with relevant Ministry of Labour offices, we have no evidence as to how or why or by whom this was done.

9. When Ms. Forbes was hired as an acting custodian-in-charge effective September 8, 1987 the employer provided her with a copy of the then current collective agreement which defined her terms and conditions of employment. There was no indication that she (or any other employee covered by the collective agreement has) engaged in any individual negotiations with the employer regarding terms and conditions of employment found in the collective agreement. There is little doubt that the Association and employer have participated in a collective bargaining relationship whereby the Association has performed the role of an exclusive bargaining agent on behalf of all employees covered by the terms of successive agreements negotiated between the employer and the Association (through its committee). While Mr. Joyce testified that there is no requirement that any agreement between the Association and the employer be ratified by affected employees,

the minutes of the Association's November 1976 meeting show that a vote was held on a proposed contract.

10. The evidence does not disclose when the Association first began collecting fees from its members. As of January of 1977, however, fees were raised to their current level. That was the result of a motion passed at the November, 1976 meeting recorded in the minutes as follows:

A vote was called on for a raise from \$1.00 to \$2.00 deduction per month from our salary towards the Social Club Activities. This was passed by a show of hands.

11. Members are required to sign an authorization form permitting the deduction of monies from their pay. Relevant portions of that form provide as follows:

1. The custodians voted at the meeting held on Thursday, November 25, 1976, for the continuation of a social committee and to initiate a social fund.
2. The custodians agreed to the following deductions from salary effective January 1, 1977, for those custodians concerned:
  - (a) \$5.00 initial contribution by all custodians.
  - (b) \$2.00 per month.

4. AUTHORIZATION BY EMPLOYEE

I, ..... authorize the Payroll Department to make the deductions listed in Paragraph 2(a) (b) above from my salary .....

12. Thus, while the motion and authorization form reproduced refer to a social club or committee or fund, the Association's constitution refers to what appear to be the same monies as fees to be paid by all Association members.

13. The Association also filed a document outlining its financial position from June 27, 1990 to March 24, 1993. This document clarifies a number of issues. First of all the Association's liquid assets appear to have approached but never exceeded \$4,000.00 (although there is also reference to a \$1,500.00 investment certificate purchased in November of 1990). There is no doubt that the Association's primary source of revenue is the custodians' deductions outlined above. With respect to expenditures, there are a number which have been made which could best be characterized as purely "social" (e.g. flowers for bereavement and the like), and others which might in part be similarly classified (e.g. for periodic Association functions). There are other significant expenditures, however, which either cannot be so classified or which have a distinct collective bargaining aspect to them (e.g. general office maintenance expenses, contributions to an EAP program). Most significant in this latter category are the regularly recurring expenses associated with the activities of the committee involved in negotiations with the employer.

14. Correspondence between the Association and the employer indicates that the overwhelming majority of employees covered by the terms of the relevant collective agreement are fees paying members of the Association. While the most recent of such correspondence dates to 1990, there was no suggestion that state of affairs has changed significantly (indeed, the relatively constant levels of monies collected by the Association, as indicated in its recent financial records, confirm this).

15. Despite the parties' articulation in the very first paragraph of their Agreed Statement of Facts, it is not the function of the Board to "grant" or "withhold" trade union status under the Act. As the Board observed in *Ontario Hydro*, [1989] OLRB Rep. Feb. 185 at paragraph 37:

... It is clearly *not* the Board's function to "confer" or "withhold" "the status of a trade union, as the language of older Board decisions suggests. An entity or group of persons either is or is not a trade union, depending on whether the statutory definition is satisfied. The Board's function is to make a finding of fact.

16. The statutory definition of "trade union" found in section 1(1) of the Act is as follows:

"trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers and includes a provincial, national, or international trade union, a certified council of trade unions and a designated or certified employee bargaining agency.

17. The most typical context in which the Board is called upon to determine whether an organization is a trade union is in certification applications where the applicant is a newly formed organization claiming to be a trade union. In cases such as those the Board has developed what has been referred to as the "five steps" it considers sufficient to bring a trade union into existence. These have been set out in *Local 199 U.A.W. Building Corporation*, [1977] OLRB Rep. July 472 at paragraph 10:

- (1) A constitution should be drafted setting out, among other things, the purpose of the organization (which must include the regulation of labour relations) and the procedure for electing officers and calling meetings;
- (2) the constitution should be placed before a meeting of employees for approval;
- (3) the employees attending such meeting should be admitted to membership;
- (4) the constitution should be adopted or ratified by the vote of said members;
- (5) officers should be elected pursuant to the constitution.

18. While these "five steps" have always been viewed as sufficient proof of the existence of a trade union, they are not the exclusive means of establishing trade union status. Substantial compliance with the "five steps" may well suffice (see for example *Service Employees International Union*, [1991] OLRB Rep. Feb. 267 and the cases cited therein at paragraph 14). In that respect while the employer argued there was little or no evidence of membership in the Association before the Board in the present case, I am satisfied and have already adverted to the fact that the evidence, taken as a whole, readily discloses that the vast majority of employees covered by the collective agreement are members of the Association (since this is not an application for certification, it is not necessary for me to assess the level of membership support for the purposes of section 8 or to apply the provisions of section 8(5) to the evidence of membership before me). More significant for the purposes of the present case is the fact that compliance with the "five steps" is not the only way to establish the existence of a trade union. As the Board observed in *Center Tool & Mold Company Limited*, [1985] OLRB Rep. May 633 at paragraph 16:

... In determining whether an entity or group of persons constitutes a trade union, the Board is obliged not to impose requirements unsupported by the language of section 1(1)(p) [now section 1(1)] in the context of the *Labour Relations Act*: re *CSAO National (Inc.) and Oakville Trafalgar Memorial Hospital Association*, [1972] 2 O.R. 498 (Ont. C.A.); and see, *Board of Education for the City of York*, [1984] OLRB Rep. Sept. 1279 at paragraphs 38 to 61. The definition requires that there be an organization. The precise nature of that organization is not defined, but certain necessary characteristics can be inferred from the modifying phrase of employees and from the nature of the rights, obligations and duties conferred and imposed on the trade unions by the *Labour Relations Act*.

19. As already indicated the application of the "five steps" normally occurs in relation to

newly formed organizations. This case does not fall within that category. The Association and the employer have been involved in negotiating agreements since 1970. The Association appears to have been in existence for almost 25 years; its constitutional documents date to at least 1977. The steps originally taken to bring an organization into existence will not be the subject of the same critical focus when the organization has been in existence for a considerable period of time (see *Ontario Hydro*, cited above and the cases cited therein at paragraph 44). Obviously, in the case of a newly formed organization with no “track record” compliance with the five steps may be more significant than in the case of a well-established organization which has readily demonstrated its trade union character by its conduct.

20. Having regard to all the evidence before me and, in particular, to the Association’s Constitution and Bylaws (which include provisions for the election of officers, the holding of regular meetings, and the collection of fees from members, and which also indicate a collective bargaining purpose); the long history of collective bargaining between the Association and the employer resulting in a series of collective agreements; the collection from Association members of monies used for, among other things, collective bargaining purposes; the significant number of bargaining unit employees who appear to be Association members; and the role which so strongly resembles that of an exclusive bargaining agent played by the Association, I am satisfied that the Association is a trade union within the meaning of the Act.

21. I would note that in arriving at this conclusion I have rejected a number of the arguments advanced by the employer and the Association who both resisted this conclusion. I did not find the evidence regarding overtures and inquiries made by the Association in relation to having another trade union possibly represent Association members to be particularly helpful. While some of these activities may well have taken place during or after a relevant open period, there was no evidence to suggest that the discussions ever advanced far enough to determine whether the objective would have been pursued by way of merger or amalgamation or by way of a certification application (displacement or otherwise). In short, I simply did not find this evidence to be particularly supportive of any particular inference the parties suggested should be drawn.

22. Similarly, neither was I convinced by the assertion that because the collective agreement does not contain a no strike/lock-out clause that I should infer that the Association is not a trade union. The Legislature has anticipated precisely such a gap in a collective agreement in section 43 of the Act which deems every collective agreement to provide a no strike/lock-out provision.

23. Finally, a similar argument was advanced in relation to the fact that the grievance and arbitration provisions (reproduced in paragraph 4(14) above) of the collective agreement are somewhat unusual in that they contemplate arbitration pursuant to the *Arbitration Act*, while the *Labour Relations Act*, in section 45(12) specifically provides that the *Arbitrations Act* does not apply to arbitrations under collective agreements. I was asked to infer that a reference to legislation specifically excluded by the governing legislation is consistent with the conclusion that the Association is not a trade union. Again, I do not find this argument to be persuasive. To the extent that the arbitration provisions contained in the collective agreement do not meet the requirements of section 45(1) of the Act (and I specifically make no finding in that regard), section 45(2) contains an arbitration provision which would be deemed to be included in the collective agreement. The reference in the collective agreement to the *Arbitration Act* was relied on to assert that the parties, by incorporating that legislation, did not intend to be bound by the *Labour Relations Act* and, equally, did not intend that the Association be a trade union within that Act. Mr. Joyce was quite candid, however, in his evidence that he had no understanding of the collective agreement arbitration provision (Article 11.03) and gave no evidence to support the argument about the par-

ties' intention in incorporating provisions of the *Arbitration Act*. Neither did we hear any other direct evidence about the parties' intentions at the time they first agreed to those provisions. The Association has all the necessary hallmarks to identify itself as a union. It has conducted activities over a protracted period of time consistent with those of a trade union. I am satisfied that it is a trade union within the meaning of section 1(1) of the Act. Neither am I satisfied that, in the circumstances of this case, a lack of intention to be bound by the terms of the Act (even assuming such a lack of intention had been proved before me) is or should be an effective method of avoiding its application.

24. Having determined that the Association is a trade union within the meaning of the Act, I turn now to a consideration of whether it breached its statutory obligation under section 69 which provides:

69. A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be.

25. The essential facts are set out in the agreed statement reproduced above. Once again, however, those facts were augmented by further oral and documentary evidence. In view of a significant concession by the applicant and the conclusion at which I have arrived it is unnecessary for me to review the facts in elaborate detail. There are, however, a few matters which merit exposition. Much was made of questions regarding whether and, if so, when and how the Association became involved in assisting Ms. Forbes during the course of her various grievances and, in particular, her discharge grievance. There is no doubt that she had the assistance of Bill Annand through most, if not all, of the relevant stages. Mr. Annand is a former chair of the Association who resigned his position some seven months prior to the commencement of the events giving rise to this application. Early on in those events Ms. Forbes sought and obtained his assistance. His participation was the subject of a discussion between Ms. Forbes and Mr. Joyce. Part of the rationale for seeking his involvement included the view that he would be more able to assist given the Association's (and presumably Mr. Joyce's) lack of experience regarding the handling of grievances. In any event, Mr. Joyce explicitly told Ms. Forbes that he had no difficulty with Mr. Annand assisting her throughout the grievance process. It may well be that Mr. Annand had no explicit authority to act on behalf of the Association in this matter. It may, however, be equally true that, in the circumstances, Ms. Forbes viewed his involvement as, effectively, that of the Association. The applicant has conceded, however, that she had and has no difficulty with the treatment afforded to her by the Association up until its November 27, 1993 response to her counsel's request (referred to in paragraphs 34 and 35 respectively of the agreed facts). Given that concession, I find it unnecessary to finally resolve any conflicts regarding the Association's involvement prior to that response.

26. It is perhaps useful to examine in some detail what the respective positions of Ms. Forbes and the Association were at the time of this last request and refusal. Ms. Forbes acknowledged that she had no real expectation that the Association, given its finances and history, would pay the cost of any fees associated with her representation at an arbitration of her discharge. She had consequently made arrangements to have those fees covered by the Ontario Legal Aid Plan. When that had been accomplished, counsel retained for that purpose inquired whether the Association would cover its share of the arbitrator's cost, which was estimated at \$3,000.00. Mr. Joyce responded, in writing, and cited the Association's lack of funds as the factor leading to the Association's denial of that request. Four months later Ms. Forbes (through counsel) advised the Association that further arrangements had now been made with the Ontario Legal Aid Plan to cover the arbitrator's costs up to a maximum of \$4,000.00 and requested that the Association move the matter forward to arbitration. With the possible exception of arbitration fees which might exceed

\$4,000.00, it does not appear that the applicant was making any financial demand whatsoever on the Association. All she appears to have been requesting was that the Association advance her grievance to arbitration. It is helpful to once again set out (at least the operative portion of) the Association's response to that request:

Again, we wish to advise that no steps will be taken to proceed this matter forward. After a meeting with our committee, we have been legally advised that according to our collective agreement, there is nothing to say that we must proceed with this any further.

27. Mr. Joyce explained the reference to legal advice in the Association's response. Sometime after receiving Ms. Forbes' request, Mr. Joyce went to discuss the matter with Vincent Monaghan, the employer's Superintendent of Operations. At that meeting Mr. Monaghan telephoned the employer's counsel (a member of the same firm as counsel who represented the employer at these proceedings) and the three of them discussed whether or not the Association was obliged to refer Ms. Forbes' grievance. On the basis of that conversation, Mr. Joyce concluded that there was no such obligation. Unfortunately, Mr. Joyce's evidence made it clear that while portions of the grievance arbitration provisions of the collective agreement were read to counsel at that time, the letter from the applicant was not. Neither was it suggested that the merits of Ms. Forbes' case were discussed in any fashion whatsoever. Thus, while some collective agreement provisions were considered, it is clear that the employer counsel was not made specifically aware of the precise nature of Ms. Forbes' request or the fact that no financial support was being sought from the Association.

28. Mr. Joyce was frankly unable to offer any cogent explanation for why the Association declined Ms. Forbes' request which was, effectively, little more than a request that the Association merely lend its name, not its limited financial resources, to Ms. Forbes' efforts to have her grievance arbitrated.

29. During the course of these proceedings the Association and the employer argued that, given the wording of the collective agreement, Ms. Forbes would have been able, on her own and without the necessity of the Association's consent, to advance her case to arbitration. But while that view was advanced tenaciously by counsel at the hearing, it is not at all apparent to me that understanding was shared or understood by Mr. Joyce or the Association at the time the events took place. Indeed, as adverted to earlier, Mr. Joyce candidly acknowledged that he had little understanding of the arbitration scheme contemplated by the agreement. Furthermore, even assuming the Association shared the view expressed by its counsel at the hearing that Ms. Forbes could have advanced her grievance to arbitration on her own, I am not persuaded, despite some suggestions to the contrary, that view was effectively communicated to Ms. Forbes. It is certainly not made explicit in Mr. Joyce's written response reproduced above. Indeed, it is that lack of understanding or communication which lends this case a certain tragic quality. Had that position been effectively communicated to Ms. Forbes it is hard, given the position she took and is continuing to take, to see how there would have been any necessity for the filing of the instant complaint.

30. It is not my function to interpret the provisions of the collective agreement. However, even assuming that the Association and employer's view with respect to individual carriage rights is correct, I have still not been provided with any explanation of the Association's refusal to advance Ms. Forbes' case to arbitration, particularly given that I am not persuaded that she was ever explicitly advised that access to arbitration did not depend on the Association.

31. Quite apart from the specific concerns around the Association's response to Ms. Forbes' request, there is a much more fundamental shortcoming in the Association's conduct in this matter. It is abundantly clear that the Association has simply never turned its mind to the merits of Ms. Forbes' case. And while the context in which these events have unfolded, including the Asso-

ciation's mistaken view of its legal obligations, may serve to explain this shortcoming, it does not relieve the Association of its statutory obligations. I am satisfied that the Association has breached its obligations under section 69 of the Act.

32. Counsel for the applicant argued that the Association ought to be directed to advance Ms. Forbes' case to arbitration and to pay all the attendant expenses. I am not persuaded that is an appropriate remedy in this case, given the applicant's position already outlined. The most appropriate remedy in this case is and I hereby direct the Association to consider the merits of Ms. Forbes' case, to conduct any investigation it feels is appropriate in the circumstances and to advise the applicant in writing no later than February 14, 1994 of what it intends to do and the reasons for its decision. I cannot presume to direct what the results of this inquiry will be, that is for the applicant to decide and so long as it henceforward conducts itself in accordance with its obligations under the Act, its decision is its own to make. Without proposing to suggest an exhaustive catalogue of possible results, the Association may, after conducting the relevant inquiry, determine that it will advance and fund Ms. Forbes' arbitration case, or it may decide that the case should only be advanced at the complete or partial expense of the applicant, or it may decide that the merits of Ms. Forbes' case (about which I heard very little) are so lacking in substance that it ought not to be advanced to arbitration under any circumstances. Again, so long as it reaches its conclusion after honestly turning its mind to Ms. Forbes' case and acting in a fashion free of arbitrariness, discrimination or bad faith the decision as to what it will or will not do is the Association's to make.

33. The employer submitted that it ought not to be prejudiced by any order of the Board in this case and that it should continue to have any defences previously available to it. I am prepared to accept that position to the following extent. First, in the event that an arbitration hearing results, there may be some issue as to the meaning of the collective agreement arbitration provisions and the existence and consequences of any possible conflict between the *Arbitration Act* and the *Labour Relations Act*. Although I have determined, as the parties required me to do, that the Association is a trade union within the meaning of the latter Act, I have not otherwise made any determinations with respect to this issue. Second, for various reasons many of which are obvious from this case, there will be a period of at least two years between Ms. Forbes' discharge and any arbitration hearing which may take place in respect of that discharge. I do not propose, as the Board often does, to effectively preclude the employer from arguing delay at any arbitration hearing which may result. In the circumstances, however, I do not think it would be appropriate for the employer to be permitted to rely on any delay which took place subsequent to the Association's response on November 27, 1992 to Ms. Forbes' solicitor's November 19, 1992 letter to the Association. Thus, to the extent that the employer may wish to raise any issue of delay at any arbitration hearing into Ms. Forbes' discharge, it shall only do so if and to the extent that argument was available to it as of November 27, 1992. As a corollary, to the extent that any arbitration hearing results in any financial liability for the employer, I will remain seized as to whether such liability should be shifted to or otherwise shared by the Association.

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**1335-93-M Bryan Forde, Applicant v. National Association of Broadcast Employees & Technicians Local 700, Responding Party**

**Duty of Fair Referral - Duty of Fair Representation - Interim Relief - Remedies - Unfair Labour Practice - Applicant working as lighting technician in film and television production - Applicant alleging that his union violating Act in various ways in denying him work opportunities and requesting interim order directing union to issue permits on request of employers authorizing applicant's hiring pending disposition of unfair labour practice complaint - Board finding that potential harm to applicant of not granting order primarily financial and that balance of harm weighing in favour of union - Application dismissed**

**BEFORE:** *Janice Johnston*, Vice-Chair, and Board Members *J. A. Rundle* and *E. G. Theobald*.

**APPEARANCES:** *Bryan Forde*, the applicant and *John M. Rattray* for the applicant; *Ian Roland* and *Linda Gardon* for the responding party.

**DECISION OF THE BOARD;** December 6, 1993

1. This is an application for an interim order pursuant to section 92.1 of the *Labour Relations Act* (the "Act"). By decision dated July 26, 1993, the application was dismissed. These are our reasons for doing so.

2. Section 92.1 of the Act reads as follows:

92.1-(1) On application in a pending or intended proceeding, the Board may grant such interim orders, including interim relief, as it considers appropriate on such terms as the Board considers appropriate.

3. This application for interim relief relates to Board File No. 1184-93-U (the "main proceeding") an application pursuant to section 91 of the Act in which the applicant, Bryan Forde, alleges that the responding party, the National Association of Broadcast Employees & Technicians Local 700 (the "union" or "Local 700"), has violated sections 47, 69 and 71 of the Act. In addition, the applicant sought, and the Board granted, leave to amend the application to add section 70 of the Act.

4. In accordance with the Board's Rules of Procedure both parties filed with the Board written declarations signed by persons with first hand knowledge, which detailed all of the facts upon which each party relied. The applicant filed fourteen declarations and the union filed six declarations. In an application for interim relief the Board, to enable it to proceed in an expeditious fashion, relies heavily upon these written declarations and the written submissions which accompany the declarations. In addition, the parties were provided with an opportunity to make submissions at a hearing held for this purpose. For the most part, the facts are not in dispute.

5. NABET Local 700 is a charter local union within the National Union of NABET. Local 700 has approximately 550 members. Its members work in many and diverse skilled and semi-skilled job categories for employers engaged in independent film and television production. Local 700 also supplies free-lance members for hire to broadcast facilities, especially CFTO and TV Ontario, and to other producers of video and non-broadcast production. Local 700 members may be employed for as little as half a day or for several months on a film production or TV series production cycle. Such production cycles may last as long as thirty-five weeks, or occasionally longer. Independent film and TV production in and about the Municipality of Metropolitan Toronto is car-

ried out by employers who may have collective agreements with either NABET, IATSE or ACFC, or who may carry out a film or TV production series on a non-union basis. As is common in the industry, Local 700 signs a new collective agreement for each film or TV production cycle. Film and TV cycle runs several weeks to as long as thirty-five weeks or occasionally longer.

6. Bryan Forde was a member in good standing of Local 700 from 1981 to March, 1992. He is a Chief Lighting Technician or "Gaffer". Between 1984 and 1986 Forde sat on the Executive Board of Local 700 as the Film Representative. He was President of Local 700 from April 11, 1991 to November 8, 1991. It is not necessary for the purposes of this decision to set out the details of Forde's term as President. Suffice it to say, he was unable to work with the Executive Board and in particular Linda Gardon, the Secretary- Treasurer. The relationship had so deteriorated that in November, 1991 the Executive Board requested and received Forde's resignation as President.

7. In February, 1992 the union sent out the following notice to all its members:

**EXPLANATION OF ENCLOSED DUES NOTICE AND RECEIPT**

**PLEASE READ** this before calling the office with questions answered here.

**DUES RECEIPT** - You have been receipted for total dues/permit fees paid in 1990 calendar year, January 1 - December 31. This total DOES NOT include application fee, initiation fee, fines, inactive fee or reclassification fee, as it is a receipt for tax deductible [sic] dues payments only, as specified by law.

**DUES DEDUCTIONS/STATEMENT** - At point of preparation, dues checkoff information from our signatory companies was not fully available for 1991. Therefore, you may find that your notice is not complete in this regard.

**WINTER DUES BLUES?** - Matters of financial difficulty should be addressed in writing to the Executive Board. You will not be considered for payment extensions if **you** do not raise the matter.

**MEMBERSHIP CARDS/STICKERS** - If you are in good standing, you should have a membership card and quarterly stickers including 1st 1/4 1991 (enclosed in this mailing). If this is not the case, please contact the office. Upon payment of the appropriate quarter's dues, you will be sent your quarterly sticker(s) to affix to your membership card. You may be required to display your card in the workplace, at a membership meeting, etc., so carry it with you at these times.

**DUES CRACKDOWN** - In accordance with the Constitution and Local By-laws dues are payable quarterly in advance of each calendar quarter, and it is *your responsibility* to pay. Members in bad standing working in a signatory shop may find dues deducted at source. If this is the case, and you don't rectify the matter with the Local, you may find yourself finished the production before it wraps.

**DUES CREDITS** - Dues checkoffs are credited to your dues account from the date of your initiation in the Local, except in cases of serious bad standing.

**DUES vs. BENEFITS** - Your good standing in the Local is an integral part of your involvement in the NABET 700 Benefits Fund. Don't be surprised if a claim is rejected because you're not in good dues standing with the Local.

Forde indicated that he did not get this notice. However, his wife did receive a notice. Therefore, as they live together, Forde was aware of the union's position. At this point in time, Forde was in arrears in his dues for nine months of 1991 and three months of 1992.

8. The payment of dues and the repercussions for non-payment are set out in the union's constitution and By-laws. Section 15.1 of the constitution provides as follows:

**15.1 Suspension and Expulsion**

- (a) Any member who shall be in arrears in the payment of initiation fee, regular dues, assessments or fines, either to the National or Local Union, for a period of three (3) months, shall be automatically suspended from membership in the National and any Local Union.
- (b) Suspended members shall not be deemed members in good standing and shall not be eligible to attend meetings, to hold office or to be candidates for office.
- (c) Any member who shall be in arrears in the payment of initiation fee, regular dues, assessments or fines to either the National or a Local Union for a period of six (6) months shall be automatically expelled from the Union and shall not be readmitted except upon payment of a new initiation fee and any unpaid dues, assessments or fines.

The By-Laws of Local 700 provide:

- 7.8 Dues, Fees, Fines and Assessments shall be due in the correct amount on the first day of each fiscal quarter and delinquent if not paid in full within fifteen (15) days thereafter.
- 7.9 A member who shall become delinquent under the terms of Section 7.8 above and who shall remain in arrears for a period of three (3) months shall, on midnight of the thirtieth day of the succeeding fiscal quarter, be automatically suspended from membership in NABET and the Local thereby forfeiting, during the period of suspension, all rights and privileges of membership in the Union, including the right of work through the Local.
- 7.10 A member who shall become delinquent under the terms of Section 7.9 above and who shall remain in arrears for a period of six (6) months shall, on midnight of the thirtieth day of the succeeding fiscal quarter, be automatically expelled from membership in NABET and the Local.
- 7.11 A member who shall have been expelled from NABET shall not be eligible to again become a member unless he applies for membership under the provisions of the Constitution, Article 2, and Local By-Laws, Article 2. Each such applicant shall remit with his application such fees provided for in these By-Laws, as the initiation fee for new members plus any amounts of other fees, dues, assessments, fines and/or penalties determined by the Constitution and Local By-Laws prior to such re-application. Such penalties may include, but need not be limited to, six (6) months back dues based on the Minimum Wage Scale daily rate in the category held at time of expulsion prior to re-application, plus any other monetary obligations that may have accrued to NABET and the Local during the period selected.

9. Local 700 entertains requests for late payment of dues from its members on a case by case basis. Several examples of requests from members for a grace period were provided. Near the end of February, 1992, Forde contacted the union and requested that he be sent a dues notice. After not receiving one, Forde again telephoned the union and was advised over the telephone how much he owed. It appears that he never requested an extension in time to pay his dues either verbally or in writing. On March 18, 1992 his wife delivered a cheque to the union for \$748.00, which was more than he owed.

10. On March 9, 1992, Daniel Latour, a member of Local 700, brought charges against Forde. The union's constitution deals with this situation and provides as follows:

## ARTICLE 10

## DISCIPLINE

## 10.1 Grounds

Any member who shall violate any provision of the Constitution or By-laws of the National Union or the By-laws of the Local Union with which he or she is affiliated, or who shall be guilty of conduct detrimental to the advancement of the purposes of the Union, or reflecting discredit upon it, shall be subject to discipline as set forth herein.

## 10.2 Fair Trial

Any member in good standing charged with a violation or with conduct of character described in the preceding section, shall be entitled to a full and fair trial, whereby his or her guilt or innocence of the charge may be determined. A member not in good standing shall not be entitled to stand trial. Such member may be punished summarily by the Local Executive Board or the National Executive Council (NEC). On appeal, any such punishment by the Local Executive Board shall be subject to review and modification by the National Executive Council (NEC).

## 10.3 (a) Charges

All charges of the character described in Section 10.1 hereof shall be in writing, in affidavit form, subscribed and sworn to by the person(s) making the charges, who shall be an active member(s) in good standing of the Union. Such charge shall contain the name(s) of the accused, the offense(s) charged, the particulars with respect to the conduct or violation complained of, the Section(s) of the Constitution or By-laws involved and the names of all witnesses to the offense charged who are then known to the accuser. The charges shall be filed with the Local Secretary/Secretary-Treasurer (or his or her designee) of the accused member's Local. If the Local Secretary/Secretary-Treasurer is the accused, the accuser, or a witness, then all future references to Local Secretary/Secretary-Treasurer in this Article should read as "Local President or his or her designee". The accuser shall promptly send a copy of the charges to the appropriate Regional Vice-President and the Regional Vice-President shall immediately advise the accused that action may be undertaken. If the Regional Vice-President is the accused, the accuser, or a witness, then all future reference to the Regional Vice-President in this article should be read as "National President or his or her designee".

11. The union's Executive Board met on March 16, 1992, and concluded that Forde was not a member in good standing as he had not paid his outstanding dues. The relevant portion of the constitution reads as follows:

23. Article 2 of the Constitution provides, inter alia, as follows:

## 2.3(b) Good Standing

A member is in good standing when he or she:

1. has paid his or her initiation fee or is in the process of such payment in accordance with the Local By-Laws; and
2. has paid all financial obligations owed to either the National Union or Local Union or is not delinquent more than thirty (30) days in the payment of such obligations; and
3. has not been deprived of good standing (including by suspension and/or expulsion) as a result of a trial conducted in accordance with Article 10.

Loss of good standing occurs when a member fails to fulfil **any of the above conditions** or as a result of a trial conducted in accordance with Article 10, and good standing shall be reacquired upon fulfillment of the obligation or the completion of the penalty assessed as a result of the trial.

At this same meeting, the union decided to summarily punish Forde as he was not a member in good standing. The minutes from the Executive Board Meeting provide as follows with regard to this issue:

Whereas Bryan Forde has been charged in his role both as President and as a member of NABET Local 700, under Article 10 of the NABET Constitution with respect to violation of Articles of the NABET Constitution, By-Laws of NABET Local 700 as well as conduct detrimental to the advancement of the purposes of the Union and reflecting discredit upon it, and

Whereas he has been further charged under Article 10.17 of the NABET Local 700 with respect to violations of provisions of the Constitution, violations of by-laws of the Local Union and with conduct detrimental to the advancement of the purposes of NABET and the Local Union, or to his fellow members, or to reflect discredit upon either, and

Whereas Brother Mendelson, President of the Local, is duly in receipt of the charges which are in the form described in Article 10.3(a) of the NABET Constitution, and

Whereas Brother Forde continues to be in dues arrears with his Local Union, and

Whereas Article 10.18 of the NABET Local 700 By-laws and Article 10.2 of the NABET Constitution make it clear that he is not entitled to stand trial and that this Local Executive Board may deal with him summarily,

Be it resolved that Bryan Forde be expelled from NABET AFC Local 700 effective immediately.

Be it further resolved that before any subsequent application for membership on Local 700 made by him or on his behalf may be considered by any present or future NABET Local 700 Executive Board, he must first pay all back dues owing - up to and including the first quarter of 1992, plus a fine of five thousand dollars in addition to any usual application fees.

Be it further resolved that the back dues and fine must be paid before he may work as a permittee of NABET Local 700.

**VOTE ON THE MOTION:** Unanimously in favour of the motion.

As a result, Forde was expelled from Local 700 and fined \$5,000.00. He could not apply for re-admission into the union until he paid this fine and his outstanding dues.

12. By letter dated March 17, 1992 Forde was informed of his expulsion and the conditions under which he could re-apply for membership. By letter dated March 24, 1992, Forde appealed the Local's decision to the National Executive Council and informed the Local he was doing so.

13. On March 31, 1992 the cheque delivered to Local 700 by his wife on March 18, 1992 was returned to him with the following covering letter:

March 31, 1992

Bryan Forde  
217 Fulton Ave.  
Toronto, Ontario  
M4K 1Y4

By Courier

Dear Bryan Forde,

Enclosed please find the cheque which was recently delivered to the office on your behalf.

Should you wish to reapply for membership, your membership application should be accompanied by a cheque in the amount of \$5,648.40 for back dues, fine and application fee.

Sincerely,

"Fred Mendelson"  
President  
For the Executive Board

This letter did not provide an explanation as to why the cheque had been accepted in the first place.

14. Before setting out the next chronological event which occurred, it is necessary to review the system utilized by Local 700 to refer its members to available work. Members of NABET Local 700 are given preference for employment on all jobs for which Local 700 is the collective bargaining agent. Work is dispatched from the hiring hall to members in good standing in the appropriate job classification, first by employer request and then on an equal and fair rotation basis. Work is dispatched to non-members on a temporary permit basis only when a qualified member is not available. The posted hiring hall rules of Local 700 provide as follows:

NABET-AFC LOCAL 700 represents videotape and film technicians free-lancing in the communications industry.

So that we may service our contractual [sic] staffing commitments, a hiring hall has been established. Following are the rules of the hiring hall.

Members are required to give preference of employment to signators to the union agreement, even if this means refusing or cancelling non-union work when deemed necessary by the union.

Work is dispatched from the hiring hall to members in good standing in the appropriate job classification, first by employer/client request and then on an equal and fair rotation basis. There is no seniority of rotations. Members classified as first category in the job craft are rotated as per availability, before members with a duly authorized second specialty job craft. Work is dispatched to non-members on a temporary (daily, unless otherwise stated) permit basis only when a qualified member is not available.

Members who refuse or book off a work call shall not have rotation status moved to the back of the file.

A member who has had a work call cancelled shall have his rotation status moved to the front of the file.

Members are obligated to report non-available days to the office. Failure to do so may result in rotation status being moved to the back of the file. This rule also serves the obvious function of facilitating speedy crewing by allowing the office to know precisely who is potentially available.

15. Concerns with regard to the issuance of permits to non-union members, are important and sensitive issues for Local 700. Local 700 feels that it is important that it police the use of non-members. Occasionally employers hire non-members without seeking permits, and occasionally NABET 700 members, as heads of departments, hire non-members without permits. However, permit requests generally break down into two categories, daily or very short term permits of a week or less, and long term permits for the length of the film or TV cycle which could last from several weeks to as long as thirty-five weeks. A daily or short term permit is granted on short notice once it is determined that no qualified NABET member is immediately available. Long term permit requests are dealt with by or in consultation with the Local Executive Board, based on the availability of members.

16. In early April, 1992 Forde was contacted by a prospective employer, Malcolm Cross, who asked if he was available for a project, a pilot film called "Gangsters". Forde told him he was available for work. However, Cross contacted Forde a short while later and indicated that the union would not issue a permit for Forde. Forde was surprised by this as he felt the union generally provided producers with considerable leeway when they requested a permit.

17. Near the end of May, 1992 Forde was not employed by the producer of a TV series called "E.N.G." It appears that although Forde had been utilized for previous production cycles, for a variety of reasons, he was not offered employment on this occasion.

18. In the beginning of June, 1992 Malcolm Cross again contacted Forde and this time offered him employment on a TV series called "Secret Service". The union again refused to issue a permit for Forde. Linda Gardon informed the producer, John Hackett, that the union's Executive Board had passed a motion on March 16, 1992 that a permit would not be issued to Forde until he had paid his past dues and the \$5,000.00 fine. As no payments had been made by Forde, Gardon told Hackett that the Executive Board would not provide Forde with a permit.

19. At this point, Hackett had not yet signed a collective agreement with Local 700 for the series. He refused to do so until the union allowed Forde to work on the show. Therefore, to obtain a collective agreement, Local 700 agreed to allow Forde to work on the series. The Secret Service production cycle lasted until February, 1993.

20. In June, 1992 Forde was reinstated to membership by the National Executive Council of NABET but then expelled again by Local 700 who refused to accept the National's decision. Correspondence was then exchanged between Forde and representatives of the National Union who refused to interfere again. By April, 1993, Forde had retained counsel and a letter was written to the National setting out the chronology of events and requesting an appeal hearing. This request was denied. In June, 1993 Forde's counsel wrote to Local 700 requesting an opportunity to discuss and hopefully resolve the situation. No response was received to this letter, therefore the main application and an application for interim relief were filed on July 8, 1993. The application for interim relief was withdrawn as the parties were endeavouring to reach a solution to the situation. Although the parties were unable to resolve all of the outstanding issues, the fine imposed by Local 700 was reduced from \$5,000.00 to \$1,000.00. A subsequent application for interim relief was filed on July 20, 1993 and is the application currently before the Board.

21. In June, 1993 the services of Brian Forde were again sought by John Hackett. He was the producer of a TV series named "Top Cops" and he wanted to hire Forde to work on the series. In this situation, Hackett did not have the same bargaining power as he had had on the "Secret Service" production as a collective agreement was in existence between Top Cops and Local 700 which contained a union security clause. As Local 700 had members available to perform the work they refused to issue a permit for Forde. Production on this series had commenced and was ongoing at the time of the hearing of this matter.

22. By way of relief, Forde has requested:

- (i) an order directing the responding party to forthwith issue permits on the request of employers, authorizing the hiring of the Applicant pending the final disposition of the related pending application and;
- (ii) an order directing that the responding party cease and desist from further acts of intimidation, coercion and discrimination with respect to their dealings with the Applicant.

23. In support of his request for interim relief the applicant suggests that if the union continues to prevent him from working, his reputation and his career in the industry will be ruined. He points out that as a result of the union's actions he has suffered significant financial losses and has been prevented from practicing his craft. He suggests that this inability to practice his craft will severely impact on his professional development and interfere with the development of professional working relationships with other crew members. The development of good working relationships is very important with regard to additional work opportunities that become available.

24. In addition, it was suggested that if the union is allowed to continue on its current course of action, all union members will perceive that their individual freedom to engage in democratic dissent within the union will be adversely affected. Union members may no longer feel able to express an opinion for fear of persecution.

25. The union opposes the request for relief on an interim basis. The union suggests that if the Board were to interfere with the manner in which the union has dealt with the Top Cops production and order it to issue a permit for Forde, the Board would be interfering in the internal workings of the union; directing the union to contravene the applicable collective agreement and hiring hall rules; visiting the same harm claimed by Forde on the union members who would be displaced from the production; and seriously affecting the union's ability to operate as a hiring hall.

26. The Board received declarations from the union members currently employed on the Top Cops production. These declarations were to the effect that the individuals were aware of the dispute between Local 700 and Forde and that if Forde were to obtain a position on the production (presumably as a result of a Board order) they would willingly step aside.

27. Counsel on behalf of the applicant argues that the union's treatment of Forde violates the *Labour Relations Act*. Counsel argues that Forde was granted the position on Top Cops and then the union refused to allow him a permit. This action on the part of the union caused the employer to terminate Forde's employment contrary to section 47(2) of the Act.

28. The actions of the union in expelling Forde for non-payment of dues when he had attempted to and in fact had paid them, followed by his summary conviction and fine were taken arbitrarily, discriminatorily or in bad faith in counsel for the applicant's opinion. These actions led to the union's unfair treatment of him and its failure to issue a permit and allow him to work contrary to sections 69 and 70 of the *Labour Relations Act*. In addition, counsel on behalf of the applicant argued that the union's conduct was intended to intimidate and coerce Forde into submitting to the fine and taking steps to have his membership in the local reinstated. At the same time, the unreasonable level of fine and the refusal to proceed with the appeal Forde requested, constitute intimidation and coercion of Forde to not reinstate his membership in Local 700. Counsel submitted that the applicant has proven an arguable case for the relief requested and suggested that a balancing of the harm involved to Forde and the union favoured the granting of the interim relief. In support of his arguments counsel referred the Board to: *Morrison Meat Packers*, [1993] OLRB Rep. Apr. 358; *Reynolds-Lemmerz Industries*, [1993] OLRB Rep. March 242; *Great Lakes Forest Products Limited*, [1981] OLRB Rep. Feb. 158; *I.T.E. Industries Limited*, [1980] OLRB Rep. July 1001; *Re: Ontario Hydro Employees Union - CUPE Local 1000 and Walter Princesdomu*, [1975] OLRB Rep. May 444.

29. Counsel on behalf of the union argued that the request for interim relief should be dismissed, as the applicant had not made out an arguable case for the relief requested. Counsel argued that the facts of this case did not bring it within sections 47, 69 or 71 of the Act and referred the Board to two cases, *Keith MacLeod Sutherland*, [1983] OLRB Rep. July 1219 and *Saliva Colalillo*, [1982] OLRB Rep. July 1066, in support of this. In counsel's opinion the Board in *Sylvia*

*Colalillo, supra* makes it clear that the duty of fair representation in section 69 of the Act is concerned only with the representation by a trade union of an employee vis-a-vis his or her employer. There is no issue in the case before the Board with regard to the union's representation of Forde vis-a-vis an employer. Similarly, counsel suggested that section 47(2) has no applicability as although the applicant wants to be employed on the Top Cops production, without a permit from the union he cannot be so employed. As he was not therefore an "employee" within the meaning of section 47(2), it cannot be alleged that the union required an employer to discharge him. Also, there can be no issue with regard to representation vis-a-vis Top Cops as he is not employed on that series. Counsel submitted that this application focuses on the internal relationship between Forde and his union and that it does not fall within the Board's authority to regulate the manner in which the union conducts its internal affairs. With regard to section 71 of the Act counsel argued that the facts as alleged by the applicant do not indicate that the union has either threatened the applicant or engaged intimidatory or coercive action coupled with an expression or implied demand that the applicant refrain from exercising rights under the Act or from performing an obligation under the Act.

30. Counsel on behalf of the union argued that the union had not violated section 70 of the Act in refusing to issue a permit to Forde for the Top Cops production. Counsel indicated that a permit was granted for the Secret Service production because if Local 700 had not agreed to permit Forde they may have lost the work completely to a competing union. If they wanted to obtain work for other members under the Secret Service contract, they had to accept the employer's condition. However, the situation was very different with regard to the Top Cops production as a collective agreement was already in place. Qualified members in good standing were available to perform the work, therefore to issue a permit to Forde would result in a breach of the collective agreement and the hiring hall rules. Finally, counsel suggested that whether or not those union members working on the Top Cops production were willing to step aside was irrelevant. To condone them so doing would be encouraging or at the least tolerating a breach of the applicable collective agreement in a kind of conspiratorial way.

31. Counsel for the union took the position that the issues leading up to and the manner in which the applicant's membership was cancelled are an internal union matter. The applicant was well aware that falling into substantial arrears in membership dues in the absence of a request for some time to pay, results in suspension or expulsion from the union. In addition, the union was within its rights to punish him summarily in accordance with Article 10 of the union's constitution. The union's actions constituted internal union matters and cannot be said to be arbitrary, discriminatory or in bad faith contrary to section 70 of the Act. Therefore, counsel concluded that the applicant has not made out an arguable case for relief under the sections of the Act relied upon.

32. In balancing the harm in this case, counsel on behalf of the union suggested that the Board should consider the dangers of directing the union to issue a permit to the applicant. Counsel reiterated that this would be an unreasonable interference in internal union functions and would result in harm to union members in good standing. The Board would be directing the union to contravene a collective agreement and its hiring hall rules. Counsel referred the Board to *Morrison's Meat Packers, supra*, as standing for the proposition that if the harm suffered by the applicant is primarily financial in nature, this would not constitute a basis for interim relief. Counsel argued that the applicant's harm in this case was primarily financial and the Board should balance this against the harm to the union's ability to operate, and its ability to enforce the provisions of collective agreements and represent its members which will occur if the Board directs interim relief.

### Decision

33. In *Loeb Highland*, [1993] OLRB Rep. Mar. 197 the Board adopted the following approach in determining whether or not an arguable case has been made out for the relief requested.

...

26. With this in mind, we find it most appropriate to set out as one requirement in a test for interim relief that the main application must reflect an arguable case. By this we mean that if the applicant's assertions can be established, there is at least an arguable breach of the Act, or an arguable case for a remedy within the parameters of some provision of the Act. While leaving room for some innovation by parties, such a test protects the integrity of the board's processes by precluding interim relief where the main application is frivolous or vexatious. This provides the board with an element of security and some coherence between the main application and the interim relief power, but gives recognition to our other concerns described above.

34. The applicant asserts that the facts of this case demonstrates that local 700 has breached sections 47, 69, 70 and 71 of the Act. This argument is somewhat tenuous particularly with regard to section 47, 69 and 71 of the Act. It is not at all clear to us that an arguable case has been made out for a breach of those sections. In addition, the applicant's assertions that an arguable case for a breach of section 70 of the Act has been made out also gives us some concern. The incidents leading up to the applicant's expulsion could be characterized as internal union matters. However, the union's actions leading up to the applicant's expulsion and this expulsion did ultimately result in the union's refusal to "permit" or refer him for certain work. In this respect, the facts are somewhat similar to those in *Michael A. Rankin*, [1993] OLRB Rep. July 644 in which the Board looked to internal trade union processes in assessing whether subsequent conduct affecting an applicant in his or her employment context is the product of bad faith, discrimination or arbitrariness, contrary to section 70 of the Act. However, given the conclusions which follow, we are prepared to assume, without deciding, that an arguable case has been made out for the relief requested in the main application and turn now to a review and a balancing of the harm in this case.

35. In determining whether it is appropriate to grant a request for interim relief it is appropriate to apply a test which balances the harm which may occur if an order is granted against the harm which may occur if the order is not granted. In this case, counsel for the applicant asserts that if interim relief is not granted the applicant will suffer financially and will suffer damage to his reputation and his ability to maintain his contacts in the industry. Dealing first with the argument that the applicant will suffer financially if interim relief is not ordered, the jurisprudence to date makes it clear that harm which is purely financial in nature will generally not justify an order for interim relief (see in this regard *Morrison's Meat Packers*, *supra*; *Price Club Canada Inc.*, [1993] OLRB Rep. July 635; and *Blue Line Taxi Company Ltd.*, [1993] OLRB Rep. Aug. 793). If the loss is purely economic, it can be rectified by a monetary award in the main action.

36. The applicant asserts that if the Board does not direct the union to issue him a permit for the Top Cops production, the loss of the opportunity to work would have a significant adverse effect on his professional working relationships in the industry. In dealing with this aspect of the harm, we are cognizant of the fact that the events giving rise to this complaint occurred in March, 1992. In April, 1992, the applicant's services were sought by Malcolm Cross for the pilot film "Gangsters". The union refused to issue a permit for the applicant and it appears that he did virtually nothing about this. While he was in contact with Local 700 and the national office of the union in the summer and fall of 1992, from November, 1992 to April 1993 it appears that the applicant did very little to pursue his rights. Although he was working on the Secret Service production from July, 1992 to February 1993, he had no reason to believe that the union had changed its position on

his expulsion. In *Morrison's Meat Packers*, *supra*, the Board considered a lack of expedition in the filing of an application for interim relief to be a relevant factor in determining whether the request should be granted. While we are not suggesting that the delay in filing the main application and this application for interim relief is such that it would act as a bar to these proceedings, and nor are we suggesting that all of the reasons for the delay are the fault of the applicant, his failure to act in April, 1992 when he was first denied a permit for a production and the passage of more than a year before this complaint was filed, leads us to question the appropriateness of an interim order. In addition, while we are not suggesting that a complaint pursuant to section 70 should be filed before internal remedies are exhausted, given his lack of action on the first occasion on which he was denied a permit, we must also question the urgency of the applicant's assertions that his reputation and contacts in the industry will be harmed by the union's failure to issue him a permit for the Top Cops production. His lack of action on the first occasion undermines his argument that interim relief is urgent.

37. The union argued that a balancing of the harm in this case favoured their position that interim relief should not be granted. They argued that if the Board were to direct the union to issue a permit that this would cause harm to the union's ability to operate both in terms of how the union operates its hiring hall and also in terms of the administration of its collective agreements. In numerous cases in the construction industry the Board has commented on the significant role played by union hiring halls. It is helpful to set out the oft-quoted passage from *Joe Portiss*, (1983) 4CLRB (NS) 69; [1983] OLRB Rep. July 1160, which articulates this role.

...

6. The hiring hall is a significant component in the administration of employment in the construction industry. Before the advent of unionism employment in the construction industry was not methodical, often being governed at the whim of employers and their personnel agents. Without the hiring hall employees, notably in the construction industry and the maritime industries, were too frequently the victims of abuse and arbitrary treatment at the hands of employers. (See, generally *Hearings On Hiring Halls In The Maritime Industry*, Sub-Committee On Labour Management Relations Of Senate Committee On Labour And Public Welfare, 81st Cong. (2d) ses. 100-01 (1950) and Bastress, "Application of a Constitutionally Based Duty of Fair Representation to Union Hiring Halls" (1982) West Virginia Law Review 31). If they are operated fairly hiring halls provide an equitable and efficient means to distribute jobs, particularly in industries where jobs are temporary and manpower needs fluctuate. In these situations the union is well suited to act as an employment agency.

7. The hiring hall offers advantages to both employees and employers. It saves the employee from the need to canvas numbers of employers in an often fruitless search for work, acting as a clearing house in which available jobs and available workers can be matched. Particularly in periods of high unemployment it also provides the worker with a rational and objective system for the more equitable distribution of work among all employees rather than to the privileged few. The employer gains to the extent that the hiring hall relieves him of the need to screen and recruit employees with adequate qualifications for short term jobs. The employer avoids the administrative cost he would otherwise bear as well as incidental costs which he might have to incur to retain a crew of workers through slow periods to insure available manpower in busier times. A well run hiring hall will give the employer a ready pool of labour from which he can draw on short notice with little or no administrative cost. Moreover, to the extent that the hiring hall dispatches the same members to different kinds of jobs for different employers, as is notably the case for labourers, it may engender a work force with greater experience and sophistication, which will also benefit the employer.

38. While the case before us does not pertain to the construction industry but independent film and television production, both industries utilize the hiring hall as the primary method of matching workers to employment opportunities. While clearly the Board has the jurisdiction to issue interim relief in a case in which it is alleged that section 70 of the Act has been violated, care

must be taken by the Board in exercising this jurisdiction where it could impact negatively on the ability of the union to properly function and to operate a hiring hall. Therefore, in balancing the harm in this case, we agree with union counsel's assertion that the interim relief requested is not appropriate. This conclusion is buttressed by the fact that in ordering the union to issue a permit to the applicant the Board would be ordering the union to violate a collective agreement and its hiring hall rules and would be displacing other union members from a production already in progress. Whether those members already working on Top Cops may have been willing to step aside is of little assistance to the Board. Therefore, it is our conclusion that the potential harm to the applicant of not granting the order is outweighed by the potential harm in granting the interim relief request.

39. For the reasons set out above, this application for interim relief was dismissed.

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### 2987-93-M Ontario Liquor Boards Employees' Union, Applicant v. Fort Erie Duty Free Shoppe Inc., Responding Party

**Interim Relief - Remedies - Unfair Labour Practice - Union alleging that, as result of participation by employees in arbitration proceeding, employer altering employees' hours of work in violation of the Act - Union seeking order restoring employees' hours of work pending resolution of unfair labour practice complaint - Union and employer having collective bargaining relationship since 1988 and Board identifying no significant labour relations harm to affected employees or union if order not made - Board refusing to order employer to restore employees' hours of work, but directing it to notify employees of their rights under the Act through distribution of Board notice**

**BEFORE:** *Louisa M. Davie*, Vice-Chair, and Board Members *W. A. Correll* and *B. L. Armstrong*.

**APPEARANCES:** *Elizabeth Mitchell* and *Heino Neilsen* for the applicant; *Frank A. Angeletti* and *James Pearce* for the responding party.

#### **DECISION OF THE BOARD;** December 7, 1993

1. This is an application under section 92.1 of the *Labour Relations Act* ("the Act") for an interim order relating to Board File No. 2818-93-U. This latter file involves a complaint under section 91 of the Act alleging that certain conduct by the responding party Fort Erie Duty Free Shoppe Inc. ("the employer") is contrary to sections 65, 67, 71 and 82 of the Act.

2. In its application for interim relief the applicant Ontario Liquor Boards Employees' Union ("the union") requests the Board to make an order:

"that the responding party restore the hours of work for the employees classified as fragrance associates to the schedule which had been posted prior to November 10, 1993, pending the result of the unfair labour practice complaint in OLRB File No. 2818-93-U"

and further requests the Board to make an order

"that the responding party post a notice to employees advising them of the protections of section 82 of the *Labour Relations Act* and advising the employees that the responding party will not commit any of the acts of interference or discrimination described in that section and recognizes their right to participate in the lawful activities of the applicant, including grievance arbitrations, without fear of reprisal".

3. The trade union and the employer each filed extensive materials with the Board. As part of their filings, and in accordance with Rules 86 and 89 of the Board's Rules of Procedure both parties submitted declarations regarding their respective evidence and written representations in support of their positions. In addition, on November 30, 1993 the Board heard the oral representations of the parties at a hearing scheduled for that purpose. At that hearing, and in the material filed before us, we were referred to the following decisions of the Board each of which deals with applications for interim relief; *Loeb Highland*, [1993] OLRB Rep. Mar. 197, *Morrison Meat Packers Ltd.*, [1993] OLRB Rep. Apr. 358, *Reynolds-Lemmerz Industries*, [1993] OLRB Rep. Mar. 242, *Metropolitan Toronto Apartment Builders Association*, [1993] OLRB Rep. Mar. 219, *La Section catholique du Conseil scolaire de langue française d'Ottawa-Carleton*, [1993] OLRB Rep. Sept. 844, *Price Club Canada Inc.*, [1993] OLRB Rep. July 635. We have considered these decisions and the principles set out therein. Although not referred to by counsel we have also considered the most recent decision of the Board with respect to interim relief in Board File No. 3438-92-M *Tate Andale Canada Inc.* decision dated October 13, 1993 [now reported at [1993] OLRB Rep. Oct. 1019].

4. Both counsel agreed that the facts and circumstances which give rise to this application for interim relief are unique and unlike the interim relief cases with which the Board has previously dealt. In this case the primary focus of the trade union's request for interim relief as stated by its counsel is the "protection of witnesses' rights".

5. The undisputed facts contained in the declarations which we find relevant to our determination of this matter may be summarized as follows.

6. The union and the employer have had a contractual bargaining relationship since February 1988. Since that time they have been subject to three separate collective agreements covering periods from February 11, 1988 to February 16, 1990, June 4, 1990 to February 17, 1992 and the current collective agreement which covers the period from May 7, 1992 to February 17, 1994. The current collective agreement contains the following provisions:

#### ARTICLE 3 MANAGEMENT RIGHTS

- 3.01 The Union recognizes and acknowledges that the management of the store and direction of the working forces are fixed exclusively in the Employer and without limited the generality of the foregoing the Union acknowledges that this is the exclusive function of the employer to:

...

- (b) select, hire, transfer, assign to shifts, promote, demote, classify, lay off, recall, or retire employees, and select employees for positions excluded from the bargaining unit;
- (c) determine the location of operations, and their expansion or their curtailment, the direction of working forces, the schedules of operations, the number of shifts, the methods, processes and means of production, job content, qualify and quantify standards, the establishment of work or job assignments, the qualifications of an employee to perform any particular job; use improved methods, machinery and equipment; decide on the number of employees needed by the Employer at any time, the number of hours to be worked, starting and quitting times; determine when overtime shall be worked and the right to require employees to work overtime; the determination of financial policies, including general accounting procedures and customer relations.

**ARTICLE 5 UNION ACTIVITY AND REPRESENTATION**

- 5.08 there shall be no discrimination, favouritism or harassment by the employer or union or its members against an employee because of membership or non-membership in any lawful Union, or because of the employee's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences (subject to the employee's ability to be bonded), marital status, family status, handicap or because the employee has exercised any right specifically provided under this agreement."

**ARTICLE 9 HOURS OF WORK**

- 9.01 (a) The parties acknowledge and agree the employees covered by this Agreement shall be employed on a shift schedule comprised as follows:

...

- (ii) Customer Clearance Associates and Fragrance Associates shall be employed on a shift schedule comprised of eight (8) hours per day or forty (40) hours per week.

...

- (b) Employees working day and afternoon shifts shall be scheduled to work their shifts on a rotational basis.

...

- 9.04 Hours of work shall be posted at least four (4) weeks in advance. The Employer shall not change the scheduled hours within two (2) weeks of the shift in question.

...

- 9.06 (a) An employee who is requiring to commence work after 9:00 p.m. and before 5:00 a.m. will receive an hourly premium of fifty cents (\$0.50) per hour.

- (b) An employee who is required to commence work after 2:00 p.m. and before 9:00 p.m. will receive an hourly premium of twenty cents (\$0.20) per hour.

- 9.07 The Employer does not guarantee to provide work for any employee nor to maintain the work week or hours of work at any time in effect.

- 9.08 Fragrance Associates shall be scheduled every second weekend off provided that there are two (2) or less employees in the classification. Otherwise, each Fragrance Associate shall be scheduled every third weekend off.

7. In April 1993 a grievance was filed by the union. This grievance proceeded to arbitration. There have been several days of hearing namely June 29, October 7 and November 8 and 9. The arbitration hearing is scheduled to continue in January and March 1994. As part of its case the union called one of the fragrance advisors to give evidence. It is not disputed by the employer that this fragrance advisor attended, and was seen to attend, the arbitration hearing on all of the hearing dates. This fragrance advisor was called to give evidence on November 9, 1993. Her evidence was not completed on that day and her cross-examination is scheduled to continue in January, 1994.

8. On November 10, 1993 the employer posted changes to the schedules of work of employees, and in particular changes to the scheduled hours of work of the fragrance advisors. These changes became effective November 28, 1993. In its application under section 91 the trade

union asserts that the changes to the schedules of work were made as a reprisal for the fragrance advisors participation in, and support of, the grievance.

9. Generally speaking prior to the changes to the schedule the fragrance advisors worked the majority of their shifts between the hours of 8:00 a.m. and 8:00 p.m. (by working such shifts as 8:00 a.m. to 4:00 p.m., 11:00 a.m. to 7:00 p.m., 10:00 a.m. to 6:00 p.m. or 12:00 p.m. to 8:00 p.m.). In any particular week there was only one shift for one fragrance advisor that went beyond 8:00 p.m. (the 1:00 p.m. to 9:00 p.m. Friday evening shift). Each of the three fragrance advisors employed by the employer worked that shift once every three weeks. In addition each of the fragrance advisors was required to work only one out of every three Sundays.

10. It is not disputed that the vast majority of the other employees in the bargaining unit work a standard 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m. and 11:00 p.m. to 7:00 a.m. shift schedule. With the changes to the schedule of work, the fragrance advisors will now also work shifts which will run either from 7:00 a.m. to 3:00 p.m. or 3:00 p.m. to 11:00 p.m. The individual results flowing from these changes to the schedule indicate that the fragrance advisors will now work a greater number of "evening" shifts than before, will regularly work beyond 8:00 p.m. and up to 11:00 p.m., and are now also scheduled to work two out of every three Sundays.

11. We note that pursuant to the terms of the collective agreement the fragrance advisors are paid an hourly rate and earn a commission on their sales. Certain other sales associates also earn a commission on their sales.

12. Each of the fragrance advisors filed a declaration in which they declare that the schedule changes will inhibit them in their ability to properly perform their job, will adversely affect their commission earnings because they will be regularly scheduled to work at times during which there is less business (the fragrance advisors anticipate their commission earnings will be reduced by approximately one hundred dollars per week), and will seriously and negatively impact upon their personal lives because of circumstances personal to each of them.

13. Mr. Heino Neilson the Business Agent of the union also filed a declaration which states:

...

5. I believe that the unexpected change to the schedules of the Fragrance Associates is an attempt by the Responding Party to retaliate against them for participating in the Applicant's grievance proceeding and shall have the effect of intimidating or coercing employees from participating in the Applicant's future activities. In fact, on November 23rd, 1993, one of the Fragrance Associates, Carolyn Lown, said to me that she was afraid that, if she testified too, the Fragrance Associates may well end up working the overnight shift, another shift they have never been required to work while the other salespeople do.

6. While the Applicant has filed the unfair labour practice complaint, I believe that the interests of the Applicant, as well as the Fragrance Associates, will be harmed if the schedule is not restored immediately to the schedule which existed prior to November 10th, 1993. In particular, since, at the moment, the changes to the schedule are effective only from November 29th, to December 25th, 1993, it is likely that the merits of the complaint will not be decided by the time the changed schedule has run its course. Accordingly, it will be difficult to fashion appropriate remedies if our complaint is successful on its merits.

7. It is important to the ability of the Applicant to represent the members of this bargaining unit in a meaningful and effective way that the Applicant be able to obtain an effective remedy if its members are discriminated against for their participation in our activities, including grievance proceedings. I doubt that declaratory relief obtained after the employees have endured the dis-

crimination intended by management will be sufficient to restore the confidence of the members that the Applicant can effectively protect them.

8. ...The hourly wage rate for the fragrance Associates is lower than for other salespeople; one factor in negotiating that rate is the fact that the Fragrance Associates are in a position to earn substantially more commissions than other salse [sic] staff. By reducing the opportunities for those commissions, the Responding Party is undermining the integrity of the wage scales in the collective agreement; neither the perceived loss of status nor the challenge to the integrity of the wage scales will be remedied by declaratory relief obtained some weeks or months after the event.

9. In addition, with respect to the timing of this discriminatory conduct, the parties are about to enter into negotiations toward a new collective agreement and expect to be in bargaining before the merits of the underlying complaint can be determined. Therefore, it is important to the Applicant to have interim relief which maintains the status quo as it existed prior to November 10th, 1993.

...

In her declaration Ms. Lown does not speak of the fear referred to in paragraph 5 of Mr. Neilson's declaration.

14. The declaration of James Pearce filed on behalf of the employer denies that the schedule changes were motivated for any reason other than the "good and valid business reasons and business efficiency" detailed therein. These business reasons include an attempt by the employer to maximize sales by extending the availability of coverage and by reducing the overlap of the schedules of the fragrance advisors which had previously existed. An ancillary benefit of this is that coverage by the other sales associates for other areas of the sales floor is also maximized. Through the schedule the employer also seeks to enhance coverage by fragrance associates on Sunday "which has recently become [the employer's] busiest day". The declaration also states:

...

- (d) The amended schedule is only for the month of *December 1993* which is our year end, and was implemented in an attempt by Fort Erie to maximize its total sales for the year in all fragrance lines. Only by accomplishing this, will Fort Erie be in a better position to negotiate with its Suppliers and Manufacturers for favourable terms and conditions for 1994 purchases. The degree of success in negotiating these favourable terms and conditions has a serious impact on present and future operating results;

...

15. In his declaration Mr. Pearce disputes that the fragrance associates' ability to earn commission will be adversely impacted and declares "in fact it is anticipated that such commissions will be increased". The employer also disputes that the changes to the schedule will affect the fragrance advisors' ability to perform their job and notes that in any event the changes represent only a minimal change to the schedule of the fragrance advisors.

16. Both in the declaration of James Pearce and in the submissions of counsel at the hearing the employer asserted that the primary thrust of the position of the fragrance advisors is that they don't like the new schedules, that it will cause them personal inconvenience, and that as a result of their past schedule they feel that they have enjoyed a special status or privilege which should be continued. In response to this the employer takes the position that the fragrance advisors do not currently have, and should not be given any special status or scheduling privileges not available to other bargaining unit members. In this regard James Pearce's declaration states:

...

12. The issue of scheduling of hours for Fragrance Associates has been the subject of previous discussions between the parties and it may well be that this is an issue that the union may wish to deal with at the upcoming negotiations for renewal of the Collective Agreement. However, this issue should be dealt with at negotiations and not under the guise of a complaint under Section 91 or an Interim Order pursuant to Section 92.1. The Applicant is seeking to achieve the result of a guarantee of a certain schedule of hours for Fragrance Associates indirectly through this process when no such right or guarantee presently exists under the Collective Agreement. In short, the Applicant is seeking directly to achieve a result that it could directly achieve under the Collective Agreement and in effect attempting to amend, alter or modify the provisions of the Collective Agreement.

17. Finally, the declaration filed in support of the employer's position disputes Mr. Neilson's assertions of harm which will flow to the union if the interim order is not granted as "bald allegations" for which "there exists no factual basis". The declaration goes on to list the harm which will flow to the employer if the interim order is granted. It states that the employer will be unable to realize the benefits which it anticipates and expects to achieve from the amended schedule if the interim order is granted and also states:

...

16. As previously noted, the amended schedule was implemented only to cover a period of approximately one month from November 28, 1993 through to December 25, 1993, which would bring Fort Erie to its year end. The purpose for its implementation was in an attempt by Fort Erie to maximize its total sales for the year in all fragrance lines so as to achieve its sales forecasts for 1993 which in turn would allow Fort Erie to be in a better position to negotiate favourable terms and conditions with suppliers and manufacturers with respect to 1994 purchases. Without the extended coverage provided under the amended schedule, Fort Erie will not be able to meet its sales targets thereby impacting upon its present operating results. Moreover, and equally as important, without meeting its sales objectives, Fort Erie will not be in a position to negotiate favourable terms and conditions with its suppliers and manufacturers for its 1994 purchases. This would result in serious and irreparable harm which cannot be quantified in monetary terms and as such Fort Erie could never be compensated in damages of the Interim Order was granted.

...

19. Depending on its business needs and the level of customers in January, 1994, it may well be that Fort Erie will be required to further alter or change its schedules at that time. It is unlikely that the merits of this complaint will be decided by the time Fort Erie may be required to make further changes in January, 1994. The interim relief being sought by the Applicant would restrict Fort Erie from implementing changes to schedules as may be required in January, 1994 and for all intents and purposes, would restrict Fort Erie from being able to operate and manage its business appropriately.

20. To the extent that the complaints are directed to the specific issue of the amended schedule that was to be implemented and carried out up to December 25, 1993 and to the extent that any interim relief requested by the Applicant would prohibit any changes to the schedule save and except as existed prior to November 28, 1993, such prohibitions on these measures in effect decides the issue in favour of the Applicant. If the interim relief is granted and the Applicant's [sic] subsequently loses on the merits of the complaint, no remedy could be directed by the Board or instituted which could duplicate the position Fort Erie would have found itself but for the granting of the interim relief. In short, the interim relief requested by the Applicant would essentially decide the matter in favour of the Applicant for all time.

21. If the interim relief is granted, Fort Erie will have lost an essential component of the Collective Agreement which is bargained for during the renewal, with respect to its right and ability to establish and alter schedules of work. A Board Order staying the effect of one of the provisions

of the Collective Agreement would result in an intervention into the bargain made between the Applicant and Fort Erie.

...

18. The cases referred to in paragraph 3 herein have enunciated two elements which the Board will consider in making its determination under section 92.1. The first element requires the Board to assess, in a preliminary way whether the main application to which the request for interim relief relates reflects an "arguable case". The second element requires the Board to balance the relative harm which may result from a decision to grant or not grant interim relief. In this regard when considering the section 92.1 application the Board balances the harm to each party to determine what harm may occur if the interim order is not granted and what harm may occur if it is.

19. Counsel for the employer asserted that the Board's enunciation of the "arguable case" element established an artificially low threshold or test for applicants to meet in cases such as this which do not involve allegations of an unfair labour practice during an organizing drive, or which do not cast upon the employer a reverse onus. Counsel urged this panel to impose a higher threshold and suggested in the circumstances of this case, at a minimum the threshold should be whether the trade union has established a strong *prima facie* case.

20. We need not determine whether the circumstances of this case cast upon the employer a reverse onus or whether the appropriate element for assessing the merits of the main application is one which focuses upon an "arguable" or "*prima facie*" case. In our view the unfair labour practice complaint filed by the union makes out either an arguable or *prima facie* case. At this point we need not determine the strength of the applicant's case. We are satisfied that it is plausible or possible that a panel hearing the merits of the complaint may find that the Act has been violated and order an appropriate remedy. The complaint is not one which is frivolous, vexatious or which has no possibility of success.

21. We turn then to look at an assessment of the relative harm which may result from a decision to grant or not grant interim relief. In this regard we find it necessary to draw a distinction between the two types of interim relief orders which the union has requested.

22. We have determined to dismiss that part of the interim order application in which the trade union seeks an order that the employer restore the hours of work for the employees classified as fragrance advisors to the schedule posted prior to November 10th, 1993. We have also determined to grant that part of the interim order in which the trade union seeks a notice to employees advising employees of the protections of section 82 of the *Labour Relations Act*.

23. In balancing the relative harm to each party it is significant to recognize that the Board has extensive experience in fashioning remedial orders within a labour relations context. The Board has broad remedial powers and although it may at times be difficult to assess and compensate for different types of "damages", that difficulty in and of itself cannot propel the Board or be the determinative factor in ordering interim relief. In *Reynolds-Lemmerz, supra*, the Board dealt with the request for interim relief in another context but stated:

...the goal of this panel's ruling is the preservation of the right of the union to a meaningful remedy, should the complaint be upheld, while at the same time intruding as little as possible on the employer's interests.

We find that comment to be equally applicable to the situation before us.

24. Similarly, it is significant to recognize that the balancing of "harm" is balancing of relative *labour relations* harm and not purely financial harm. Thus in *Morrison Meat Packers, supra*, the Board noted:

...We are satisfied that perhaps the most significant factor the Board must weigh will be the relative labour relations harm which could result from granting or not granting the interim orders sought. There must be some danger of possible significant harm to the applicant before the Board will grant the relief sought. Furthermore that harm must be more significant than the possible harm which may result to the responding party of the order sought is granted.

• • •

We are not persuaded that the Board ought to intervene and use its powers to grant interim orders to avoid or limit harm which is purely financial.

See also *Price Club Canada Inc., supra*, at paragraph 16.

25. In this case, there is no serious or significant labour relations harm to the individual franchise advisors if the interim order restoring the schedule of work that existed prior to November 10th, 1993 is not granted. The individual harm is predominately financial. In our view any potential loss of commission or other financial losses which may arise from the schedule changes can be remedied through the Board's broad remedial powers including an order of compensation for damages if the merits panel which hears the unfair labour practice complaint finds in favour of the union.

26. In balancing the relative labour relations harm between the trade union and the employer we note that the collective bargaining relationship between these parties is not at an early or fragile stage. There is no suggestion in the material that the very existence of the trade union's bargaining rights are being threatened as is the case with alleged unfair labour practices which occur during an organizing campaign, or those which occur in that more fragile and sensitive period of time shortly after the trade union is certified but before the parties have reached their first collective agreement. We find that the trade union's ability to represent its members in the bargaining unit in a meaningful and effective way is not affected by the mere implementation of the schedule changes. In this regard the trade union's reference that changes to the schedule will undermine the integrity of the wage scales or will impair the confidence of the members that the trade union can protect them is not compelling when there is nothing to suggest, and there is certainly no assertion or allegation, that the changes violate the terms of the collective agreement which exists between the parties.

27. Balanced against this is the obvious but not easily calculable or quantifiable harm which results from an interference by the Board in the employer's management of its operations, as well as the more specific harm referred to in Mr. Pearce's declaration.

28. We must also keep in mind that the current collective agreement between these parties will soon expire. The employer's scheduling practices, and any decision of the Board which deals with those practices *may* have some impact upon the collective bargaining process and negotiations upon which these parties will soon embark. In *Morrison Meat Packers Ltd., supra*, the Board noted that:

An interim order represents, in part, an evaluation by the Board, in the face of a conflict and in response to a request by one of the parties, as to the preferred labour relations circumstances to be preserved or created during the course of the litigation of the main application.

In this instance the preferred labour relations circumstance to be preserved or created is one which

maintains the integrity of the agreement which the parties have negotiated and which they will now seek to re-negotiate. In this case the preferred labour relations circumstance does not include intervention or intrusion by the Board into the collective agreement made by the employer and the trade union or a potential interference upon their impending negotiations through the imposition of a work schedule dictated by the Board.

29. The effect of a Board Order, even an interim one, which requires the employer to restore schedules as they existed prior to November 10th, would be to stay one of the provisions of the negotiated collective agreement which currently governs the relationship between the parties. It would stay that part of the management's right clause which the parties have negotiated which permits the employer to determine the schedules of operations, the number of shifts, the number of hours to be worked and starting and quitting times. The effect of an Order directing the employer to restore the hours of work for the employees classified as fragrance associates to the schedule which had been posted prior to November 10th, 1993 would also suspend the operation of Article 9.07 of the collective agreement which specifies that the employer does not guarantee to maintain "hours of work at any time in effect". Such an interim order would in effect "guarantee" the hours work until the unfair labour practice complaint has been litigated and decided.

30. We find that the comments of the Board in *La Section catholique du Conseil scolaire de langue française d'Ottawa-Carleton*, *supra*, apply to the situation at hand. In that instance the Board stated:

• • •

"On the other hand, it is hard to deny that granting the orders sought would indeed to the "total victory" in these disputes. To the extent that the complaints are directed at two specific measures which will be carried out in the first and last weeks of August, the prohibition of these measures in effect decides the issues in favour of the Association. If these orders are granted and the Association subsequently loses on the merits of the complaints, it appears unlikely that the Catholic Section and the Full Board could institute duplicate measures once the school year has started. We do not intend to suggest that it will never be appropriate to grant interim relief even in these circumstances. However, unless the harm that might result from a refusal of the order is at least equally compelling, and is related to important public policy or labour relations considerations, we are reluctant to order interim relief where it essentially decides the matter in favour of one party."

(emphasis added)

Similarly an interim order directing the employer to change the work schedules of the fragrance advisors to those which existed prior to November 10, would essentially decide the matter in favour of the union. It is unlikely that the employer could institute duplicate measures once its year end has passed and thereby attain the results it seeks to achieve through the schedule changes.

31. As granting an Order requiring the employer to restore the hours of work for the employees to that which existed prior to November 10th, 1993 would change the essential bargain between the union and the employer, would constitute a serious intrusion upon their established collective bargaining relationship, and would essentially decide the matter in favour of one party on the basis of contradictory and disputed declarations by declarants who have not been subject to cross-examination, and in the absence of serious labour relations harm to the union to justify the granting of such an order, we have determined that the union's request as it relates to the revocation of the work schedule posted on November 10, 1993 should not be granted.

32. Different considerations apply however when balancing the relative harm to the parties with respect to the trade union's request for a posting. The allegation of the trade union in the

complaint raises important public policy and broader labour relations considerations which go beyond mere scheduling by an employer. If proven, the allegations in the complaint raise the specter that the employer engaged in discriminatory conduct and imposed pecuniary penalties as a reprisal, or in retaliation for employees having exercised rights under the Act including the right to file and participate in grievance proceedings and to testify at arbitration hearings. In that respect the balancing of labour relations harm must take into account the adequacy of any remedy available to the trade union if the union is ultimately successful in its complaint. Thus, if the union succeeds in its complaint it may be impossible for the Board to fashion a remedy which places the union back in the position that it would have been but for the breach of the Act. For example, by the time the complaint is adjudicated and a decision has been issued there may be no way in which the union can return to that point in the arbitration hearing in which it required the willing co-operation and participation of employee witnesses.

33. To some extent an expeditious *interim* remedial response from the Board which advises employees of these proceedings and of their rights under the collective agreement may serve to prevent possible harm without causing a harmful labour relations effect to the employer. Save for the expense associated with the distribution to employees of any notice from the Board, there is no apparent harm to the employer if the Board grants that portion of the trade union's request. This is particularly so when the collective agreement between the employer and the trade union contains a provision specifying that there shall be no discrimination because an employee has exercised rights under the collective agreement, and the employer's own pleadings state that the employer "...believes in and supports the fundamental right of employees or the union to exercise their rights under the collective agreement and *Labour Relations Act*."

34. The employer is therefore directed to provide a copy of the notice attached as Appendix "A" to all employees in the bargaining unit.

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Appendix "A"

The Labour Relations Act

# NOTICE TO EMPLOYEES

## By Order of the Ontario Labour Relations Board

WE HAVE DELIVERED THIS NOTICE IN COMPLIANCE WITH A DIRECTION OF THE BOARD ISSUED AFTER A HEARING IN WHICH BOTH THE COMPANY THE UNION HAD THE OPPORTUNITY TO MAKE SUBMISSIONS.

THE UNION HAS FILED A COMPLAINT WITH THE ONTARIO LABOUR RELATIONS ABOUT THE CHANGES TO THE WORK SCHEDULES OF THE FRAGRANCE ADVISORS WHICH BECAME EFFECTIVE ON NOVEMBER 28TH, 1993.

IT IS THE UNION'S POSITION THAT, THE SCHEDULE CHANGES WERE MADE TO PENALIZE EMPLOYEES BECAUSE THEY TESTIFIED OR MAY TESTIFY AT AN ONGOING ARBITRATION HEARING. THE UNION CLAIMS THE COMPANY IS DISCRIMINATING AGAINST THE FRAGRANCE ADVISORS BECAUSE THEY EXERCISED THEIR RIGHTS UNDER THE LABOUR RELATIONS ACT AND IN PARTICULAR BECAUSE THEY EXERCISED THEIR RIGHTS TO PARTICIPATE IN THE UNION'S LAWFUL ACTIVITIES.

IT IS THE POSITION OF THE COMPANY THAT THE CHANGES TO THE SCHEDULE OF THE FRAGRANCE ADVISORS WERE MADE FOR BUSINESS REASONS AND WERE MADE IN ACCORDANCE WITH THE RIGHTS OF MANAGEMENT AS SET OUT IN THE COLLECTIVE AGREEMENT BETWEEN THE COMPANY AND THE UNION. THE COMPANY CLAIMS THE SCHEDULE CHANGES HAD NOTHING TO DO WITH THE EXERCISE OF EMPLOYEE RIGHTS UNDER EITHER THE LABOUR RELATIONS ACT OR THE GRIEVANCE AND ARBITRATION RIGHTS SET OUT IN THE COLLECTIVE AGREEMENT.

A HEARING BEFORE THE BOARD WILL SOON TAKE PLACE TO DECIDE (AMONG OTHER THINGS) WHY THE CHANGES TO THE SCHEDULE WERE IMPLEMENTED. IF THE BOARD ULTIMATELY DETERMINES THAT THE CHANGES HAD NOTHING TO DO WITH THE EXERCISE OF RIGHTS BY THE UNION OR THE EMPLOYEES, THE CHANGES TO THE SCHEDULE MAY BE CONFIRMED. IF THE BOARD ULTIMATE DETERMINES THAT THE CHANGES TO THE SCHEDULES OCCURRED BECAUSE THE UNION AND THE EMPLOYEES EXERCISED THEIR RIGHTS UNDER THE LABOUR RELATIONS ACT AND THE COLLECTIVE AGREEMENT, THE BOARD MAY DIRECT THAT THE CHANGED SCHEDULES BE REVOKED AND THAT THE EMPLOYEES BE COMPENSATED FOR ALL EARNINGS AND BENEFITS LOST AS A RESULT OF THE CHANGES TO THEIR SCHEDULE.

EMPLOYEES IN ONTARIO HAVE THESE RIGHTS WHICH ARE PROTECTED BY LAW:

A. AN EMPLOYEE HAS THE RIGHT TO JOIN A TRADE UNION OF HIS OR HER OWN CHOICE AND TO PARTICIPATE IN ITS LAWFUL ACTIVITIES.

B. AN EMPLOYEE HAS THE RIGHT TO OPPOSE A TRADE UNION, OR SUBJECT TO THE UNION SECURITY CLAUSE IN THE COLLECTIVE AGREEMENT WITH HIS OR HER EMPLOYER, CAN REFUSE TO JOIN A TRADE UNION.

C. AN EMPLOYEE HAS THE RIGHT NOT TO BE DISCRIMINATED AGAINST OR PENALIZED BY AN EMPLOYER OR BY A TRADE UNION BECAUSE HE OR SHE IS EXERCISING RIGHTS UNDER THE LABOUR RELATIONS ACT.

D. AN EMPLOYEE HAS THE RIGHT NOT TO BE PENALIZED BECAUSE HE OR SHE PARTICIPATED IN A PROCEEDING UNDER THE LABOUR RELATIONS ACT.

IT IS UNLAWFUL FOR EMPLOYEES TO BE FIRED OR IN ANY WAY PENALIZED FOR THE EXERCISE OF THESE RIGHTS. IT IS UNLAWFUL FOR ANYONE TO INTIMIDATE OR COERCE OR IMPOSE A PECUNIARY OR OTHER PENALTY ON A PERSON BECAUSE A PERSON HAS PARTICIPATED OR IS ABOUT TO PARTICIPATE IN A PROCEEDING UNDER THE LABOUR RELATIONS ACT.

This is an official notice of the Board.

DATED this 7th day of DECEMBER, 1993

**1698-93-U; 3083-93-U** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada), Applicant v. **Landawn Shopping Centres Limited**, Responding Party; National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada), Applicant v. Landawn Shopping Centre Limited and, Jerome N. Sprackman, Responding Parties

**Charter of Rights and Freedoms - Constitutional Law - Practice and Procedure - Stay - Unfair Labour Practice - Board earlier setting matter down for hearing to receive parties' submissions on Board's jurisdiction to hear and decide complaint in light of court order under *Companies' Creditors' Arrangement Act* (CCAA) - Board reserving decision after hearing union's arguments regarding effect of *Charter of Rights and Freedoms* on order under CCAA**

**APPEARANCES:** *Frank Luce* appearing on behalf of the union and certain discharged employees; No one appearing on behalf of the respondent employer.

**BEFORE:** *R. O. MacDowell*, Alternate Chair, and Board Members *R. W. Pirrie* and *E. G. Theobald*.

**DECISION OF THE BOARD;** December 13, 1993

1. This is an unfair labour practice complaint.
2. On November 4, 1993 the Board issued an interim decision [now reported at [1993] OLRB Rep. Nov. 1150], inviting the applicant and the responding parties to make representations on the Board's jurisdiction to proceed, in the face of an outstanding *ex parte* Order, made under the *Companies Creditors Arrangement Act*. This Order was obtained without notice to the union, the employees affected by the proceeding before this Board, or the Board itself; however, as we understand it, the respondent's position is that, as a result of that Order, it need not adhere to the obligations in the *Labour Relations Act*, and is not subject to remedies available for breach of the Act.
3. The Board held a hearing on December 13, 1993 to consider the basis for and effect of the above-mentioned Order. Counsel appeared on the union's behalf, and on behalf of certain employees whom the employer has discharged since the Board's earlier decision.
4. Counsel for the responding employer faxed the Board to advise that the employer would not appear.

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5. The issues raised by this case can be simply stated: To what extent can an *ex parte* Order issued under the CCAA, immunize an *ongoing business*, from the application of provincial statutes that protect the employees working in that business.
6. It is important to emphasize that the business to which the Order relates is not moribund. The company continues to carry on business and employ employees - although it no longer employs the union members to whom this complaint relates. The union says that these employees were recently discharged because they joined the union, and that such discharge occurred after the *ex parte* Order, and under its purported protective cloak. In the union's submission the responding party's business difficulties and restructuring are being used as a pretext to rid itself of union supporters - something which the *Labour Relations Act* prohibits.

7. The CCAA is intended to protect property and commercial interests. By contrast, provincial employment legislation is designed to protect the rights of workers - including their right to freedom of association, protection on the job from conditions threatening safety (and prohibited by the *Health and Safety Act*), protection from penalties based on race, religion, trade union affiliation, and so on. However, these statutory rights are given practical reality by enforcement mechanisms under provincial law. To suspend those enforcement mechanisms at the very least postpones these statutory rights, and may undermine the underlying right which the statute was designed to vindicate.

8. In this complaint, the union contends that *all* of the employees who opted for representation and collective bargaining have been discharged by the employer because they made that choice; but, of course, the issue might be the same if they were fired because they were black, or because they were Jews, or because they were women. As we have already said, the issue is a broader one: the extent to which the CCAA suspends worker protections under various statutes.

9. Counsel for the union asserts that the CCAA (and by implication Orders made under it) cannot suspend these worker protections or statutory remedies, because, to so read it, would create a collision with the *Charter of Rights and Freedoms*, which protects freedom of association, guarantees equal protection of the law, protects security of the person, and so on. He says that the suspension of the provincial statutes which give substance to these guarantees, contravenes the *Charter*, and cannot stand. He also raises interpretation issues concerning the extent to which the CCAA a statute designed to protect the interests of lenders, can, when properly construed, circumscribe the statutory rights of employees. He points out that no one has had the opportunity to consider the legal underpinnings or the potential limits of the CCAA, given the way in which the matter came before the Court. And, of course, the Order itself may be varied should the Court consider this to be appropriate.

10. We think this case poses difficult and fundamental legal questions concerning the interplay of Federal regulatory legislation designed to protect property interests, and provincial regulatory legislation designed to protect the interest of workers. It requires careful consideration of the general legal framework in which the Board operates, and the extent to which the *Labour Relations Act* protections may, (or may not) clash with the CCAA. It is necessary to consider whether there is such collision, and if there is, whether this is the appropriate forum to resolve the conflict.

11. Accordingly, we think that it is prudent to reserve with respect to our jurisdiction to proceed with this case, as it relates to Landawn Shopping Centres Limited the corporate entity which has sought the "protection" of the CCAA.

12. However, in a related complaint the union has also named Jerome N. Sprackman, the owner and directing mind of the respondent company. The union points out that the *Labour Relations Act* covers not only employers (the corporation) but also persons acting on behalf of employers; and in the union's submission, Mr. Sprackman is a "person" acting on behalf of the responding party Landawn Shopping Centres Limited. Mr. Sprackman, it is alleged, is the person who directed the illegal acts. And Mr. Sprackman is not protected by the CCAA or the Court Order.

13. We see no jurisdictional impediment to entertaining the complaint against Mr. Sprackman even though the proceedings against the corporate employer may be stayed. However, it is not obvious that this is a practical way to proceed at this stage - in effect, to sever proceedings because one of the responding parties is temporarily immune. That, too, requires consideration.

14. Finally, we were told that tomorrow, December 14, 1993, the Court will be asked to review and extend the Order mentioned above. Neither the union, nor the employees, nor the

Board have actually been served with such application; but union counsel said that he had heard about it, that he intended to appear, and that he would bring his clients' concern to the attention of the Court.

15. In all of these circumstances, the Board considers it prudent to reserve with respect to all of the legal and practical issues that have been put before us. We also think that it is prudent to have the Board's own counsel in Court, tomorrow, to speak, as necessary, to the impact of and Order on the ongoing litigation before us. If it is intended that the restructuring permitted and protected by the CCAA may include the abrogation of the employees' statutory rights, it would be useful to have that question clarified. We might also add, parenthetically, that Orders of this kind are appearing with increasing frequency as businesses restructure; so an issue which is specific to these particular parties may have broader legal ramifications for labour relations statutes in this province. That is why the Board identified the Attorney General's interest in its decision of November 4, 1993.

*[On December 14, 1993, Mr. Justice Houlden made the following order on consent of Landawn Shopping Centres Limited and CAW-Canada: "This Court orders that the present proceedings against Landawn Shopping Centres Limited before the Ontario Labour Relations Board (Board File Numbers 1698-93-U and 3083-93-U) be and are hereby allowed, nunc pro tunc, to continue to adjudication, provided that no order of the Ontario Labour Relations Board made in connection with the proceedings shall be enforceable without first obtaining the leave and direction of this Honourable Court." : Editor]*

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**1674-93-U London and District Construction Association and Labour Relations Bureau of the Ontario General Contractors Association, Applicants v. Labourers' International Union of North America, Local 1059, Responding Party v. Concrete Forming (1980) Limited, Rockwell Concrete Forming (London) Limited, Walloy Materials Limited, Forest City Forming Ltd., Lider General Construction Ltd., O.S. Concrete Forming Inc., Co-Fo Concrete Forming Limited, Intervenors**

**Bargaining Rights - Collective Agreement - Construction Industry - Parties - Practice and Procedure - Unfair Labour Practice - Board satisfied that applicants having status to bring complaint and that application ought not to be dismissed on basis of asserted delay - London Construction Association alleging that purported collective agreement between London Concrete Forming Contractors and Labourers' union violating section 148 of the Act - Applicant requesting that Board declare agreement to be void as it relates to ICI sector of the construction industry - Ontario Formwork Agreement a product of bargaining relationship specifically exempted from section 148(2) of the Act and Board satisfied that impugned agreement binding London Contractors to that agreement - Application dismissed**

**BEFORE:** G. T. Surdykowski, Vice-Chair, and Board Members W. N. Fraser and G. McMenemy.

**APPEARANCES:** David L. Brisbin for the applicants, T.E. Dool for London and District Construction Association, J.C. Thomson for Labour Relations Bureau; L. A. Richmond for the responding party; Carl Peterson, Ted Traczuk and Joe Liberzorie for the intervenors.

**DECISION OF THE BOARD; December 8, 1993****I****The Application**

1. This is an application, brought under section 91 of the *Labour Relations Act*, in which the applicants allege that the purported collective agreement between the London and District Concrete Forming Contractors (the "London Contractors") and the responding trade union ("Labourers' 1059"), commonly referred to as the "London Forming Agreement" violates the *Labour Relations Act*, specifically section 148, and request that the Board declare, among other things, pursuant to section 137(3) of the Act, that this agreement is null and void insofar as it relates to the industrial, commercial and institutional ("ICI") sector of the construction industry in Ontario.

**II****Preliminary Issues**

2. Preliminary to the merits of this application, Labourers' 1059, supported by the London Contractors, moved that the application be dismissed on two grounds: first, that the applicants do not have standing to bring the application; and second, because of the delay in bringing the application.

3. Upon considering the representations of the parties, the Board reserved its decision with respect to the issue of the applicants' standing, and dismissed Labourers' 1059's motion insofar as it was based on the delay in bringing the application.

4. With respect to the question of delay, it has long been accepted that the effect of delay in labour relations matters is generally a negative one. To put it another way, labour relations delayed are labour relations defeated and denied (*Journal Publishing Co. of Ottawa Ltd. v. Ottawa Newspaper Guild, Local 205, OLRB et al* [1977] 1 ACWS 817 (Ontario Court of Appeal), and delay in labour relations matters often works unfairness and hardship (*Re United Headware and Biltmore-Stetson (Canada) Inc.*, (1983) 40 OR(2d) 287). Delay in the resolution of any dispute is likely to create some prejudice, but this is particularly true in labour relations matters. The Board and the Courts have long recognized that the speedy resolution of labour relations disputes is both in the public interest and in the interest of those directly involved. Consequently, labour relations litigation is expected to be pursued diligently and within a reasonable time (which time is generally measured in months rather than in years) so that the matters in question can be dealt with in a manner which is timely and fair to all concerned. Indeed, the recent amendments to the *Labour Relations Act* and the changes in the Board's procedures underline both the Legislature's and the Board's sensitivity to the need to resolve labour relations disputes quickly.

5. Further, excessive unexplained delay in filing or proceeding with an application is a basis upon which the Board may decline to inquire into the matter, in the exercise of the Board's discretion under section 91 of the *Labour Relations Act*. The Board's response to delay in initiating or proceeding with a matter under the Act is not a mechanical one. It is neither possible nor appropriate to try to compile a complete list of the factors which the Board will consider when dealing with a delay issue. Each situation must be examined and determined on the merits of the particular case, although the onus is on an applicant to explain what appears to be an inordinate delay in making or pursuing a particular matter.

6. The Board's approach to delay in unfair labour practice applications has not been universally applied in cases where bargaining rights are in issue (compare the often cited and followed *The Corporation of the City of Mississauga*, [1982] OLRB Rep. March 420 to *KNK Limited*, [1991] OLRB Rep. Feb. 209, for example). This application raises an issue with respect to the province-wide collective bargaining scheme established by the *Labour Relations Act* for the ICI sector of the construction industry. On the issue of delay, the reasoning in *KNK Limited*, *supra* is more applicable than the rationale in the unfair labour practice jurisprudence. In an application which relates to the integrity of representation rights or the statutory provincial bargaining scheme for the ICI sector, which this application does, "delay" has little meaning, particularly where, as here, what is complained of is continuing. Accordingly, it would not have been appropriate to dismiss this application on the basis of the delay asserted.

7. The Board is also satisfied that applicants have the status to bring this application.

8. Section 137(3) of the *Labour Relations Act* provides that:

137.-(3) Where, on the complaint of an interested person, trade union, council of trade unions, employers' organization, employee bargaining agency or employer bargaining agency, the Board is satisfied that a person, employee, trade union, council of trade unions, affiliated bargaining agent, employee bargaining agency, employer, employers' organization, group of employers' organizations or employer bargaining agency, bargained for, attempted to bargain for, or concluded any collective agreement or other arrangement affecting employees represented by affiliated bargaining agents other than a provincial agreement as contemplated by subsection 148(1), it may direct what action, if any, a person, employee, trade union, council of trade unions, affiliated bargaining agent, employee bargaining agency, employer, employers' organization, group of employers, organizations, or employer bargaining agency, shall do or refrain from doing with respect to the bargaining for, the attempting to bargain for, or the concluding of a collective agreement or other arrangement other than a provincial agreement as contemplated by subsection 148(1).

[emphasis added]

Section 137(3) of the Act, and the provincial bargaining scheme generally, contemplates that anyone participating in or affected by a provincial agreement, or by an agreement or arrangement alleged to be prohibited by section 148(2) of the Act, can raise matters relating to the integrity of the provincial bargaining scheme before the Board. The policing mechanism in the Act enables anyone affected by a collective agreement or arrangement which affects them, perhaps only commercially, to complain to the Board in circumstances where it may not be in the interests of the parties to the collective agreement or arrangement complained of to do so. In this case, both applicants represent employers bound by the provincial agreement between the Labourers' Employee and Employer Bargaining Agencies. Further, the Labour Relations Bureau of the Ontario General Contractors Association is a part of the Employer Bargaining Agency designated to represent in bargaining all employers whose employees are represented by the various Labourers' International Union of North America affiliated bargaining agents in the ICI sector of the construction industry. As a party to that provincial bargaining relationship, the Labour Relations Bureau of the Ontario General Contractors Association has a sufficient direct interest in matters which affect that provincial bargaining relationship to give it standing to bring this application. The applicants are therefore entitled to raise the issue of whether or not the London Forming Agreement violates section 148 of the Act.

9. Accordingly, the Labourers' 1059's preliminary motion is dismissed in its entirety.

## III

The Merits

10. The London Forming Agreement contains the following purpose statement and recognition clause:

GENERAL PURPOSE

The general purpose of this Agreement is to establish mutually satisfactory relations between the Employer and its employees engaged in concrete forming and finishing construction, to provide a means for the prompt and equitable disposition of grievances, and to establish and maintain satisfactory working conditions, hours of work and wages for all employees who are subject to its provisions engaged in concrete forming and finishing construction.

ARTICLE 1 - RECOGNITION

1.01 The Employer recognizes the Union as the sole collective bargaining agency for all its construction employees engaged in concrete forming and finishing construction on all construction projects within the counties of Middlesex, Bruce, Elgin, Oxford, Perth, and Huron, save and except non-working foremen and persons above the rank of non-working foremen, office, clerical and engineering staff.

1.02 The Employer agrees to apply the terms and conditions of the Local 1059 Appendix of the Collective Agreement between the Ontario Formwork Association and the Formwork Council of Ontario (as it may be from time to time amended) to all concrete forming and finishing construction undertaken in the industrial, commercial and institutional sector of the construction industry in the Counties of Middlesex, Bruce, Elgin, Oxford, Perth and Huron.

The previous such collective agreement (which expired in February, 1992) contained the same article 1.01 but no article 1.02.

11. The collective agreement between the Ontario Formwork Association and the Formwork Council of Ontario is commonly known as the Ontario Formwork Agreement. The Ontario Formwork Association is an employer bargaining agency which has not been designated as an ICI employer bargaining agency but which bargains with the Formwork Council of Ontario, which is a council of trade unions consisting of the International Union of Operating Engineers, Local 793 ("Engineers 793") and Labourers' International Union of North America, Local Unions 183, 247, 491, 493, 506, 527, 597, 625, 837, 1036, 1059, 1081 and 1089 (all of which are also affiliated bargaining agents of a labourers designated employee bargaining agency), for a province-wide collective agreement covering all construction employees engaged in concrete forming construction in all sectors of the construction industry, including the ICI sector, employed by employer members of the Ontario Formwork Association.

12. The applicants submit that the London Forming Agreement violates section 50, and more importantly from their perspective, section 148 of the *Labour Relations Act*, in that it is a collective agreement or arrangement affecting employees represented by Labourers' 1059 in the ICI sector of the construction industry other than the single provincial agreement contemplated by the Act. The applicants submit that the province-wide collective bargaining scheme established by the Act for the ICI sector provides that there can be only one ICI collective agreement for each provincial bargaining unit established by the designation orders issued by the Minister under section 141 of the *Labour Relations Act*, subject only to certain specified and limited exceptions in the designations themselves, and that as constituents of particular employer and employee bargaining agencies respectively, the applicants and Labourers' 1059 are bound by the legislative scheme to

adhere to the single ICI sector provincial agreement negotiated by their designated bargaining agencies.

13. The applicants acknowledge that the employer and employee designations in question in this case contain an exemption from the Labourers' provincial ICI collective bargaining scheme for the Ontario Formwork Agreement but submit that this exemption should be narrowly construed. The applicants submit that the London Forming Agreement purports to cover all construction employees in all sectors of the construction industry within the Labourers' 1059's geographic jurisdiction, that it does not fall within the Ontario Formwork Agreement exemption in the designation order, and that the London Forming Agreement is therefore null and void insofar as it relates to the ICI sector. The applicants rely on the Board's decision in *Rockwall Concrete Forming (London) Limited*, [1988] OLRB Sept. 963 and also referred the Board to *All-Pro Contractors*, [1982] OLRB Rep. Aug. 1109 and *KNK Limited*, *supra*.

14. Labourers' 1059 and the London Contractors submit that the meaning and intent of Article 1 of the London Forming Agreement is to bind them to the Ontario Formwork Agreement in the ICI sector; that is, that Article 1.02 constitutes a "pick-up agreement" with respect to concrete forming construction work in the ICI sector such that the London Contractors are bound to the Ontario Formwork Agreement for all ICI concrete forming construction work in Ontario.

15. Local 1059 and the London Contractors argue that *Rockwall Concrete Forming (London) Limited*, *supra*, was wrongly decided, and that that decision incorrectly interprets the applicable designation orders and the *Labour Relations Act*. They submit that for the purposes of the Ontario Formwork Agreement Labourers' 1059 is not an affiliated bargaining agent; that is, that Local unions of the Labourers' International Union of North America are not affiliated bargaining agents of the Labourers' designated employee bargaining agency and a trade union which is not an affiliated bargaining agent is not subject to the limitations of section 148 of the Act. Referring to *Verdi Forming Limited*, [1983] OLRB Rep. Oct. 1728, which was not referred to *Rockwall*, *supra*, Labourers' 1059 and the London Contractors submit that the Labourers' designation confirms that when a trade union represents employees in the ICI sector who do not commonly bargain separately (or to put it another way, employees in different trades who commonly bargain together), it does not act as an affiliated bargaining agent. Further, they argue that in any event the London Forming Agreement in effect "opts into" the Ontario Formwork Agreement and is therefore not an agreement or arrangement prohibited by either section 50 or section 148.

16. Sections 50, 51, 52, 135, 137(3), 139(1) and (2), 140, 141(1) and (2), 146(4) and 148(1) and (2) provide that:

50. There shall be only one collective agreement at a time between a trade union or council of trade unions and an employer or employers' organization with respect to the employees in the bargaining unit defined in the collective agreement.

51. A collective agreement is, subject to and for the purposes of this Act, binding upon the employer and upon the trade union that is a party to the agreement whether or not the trade union is certified and upon the employees in the bargaining unit defined in the agreement.

52.-(1) A collective agreement between an employers' organization and a trade union or council of trade unions is, subject to and for the purposes of this Act, binding upon the employers' organization and each person who was a member of the employers' organization at the time the agreement was entered into and on whose behalf the employers' organization bargained with the trade union or council of trade unions as if it was made between each of such persons and the trade union or council of trade unions and upon the employees in the bargaining unit defined in the agreement, and, if any such person ceases to be a member of the employers' organization during the term of operation of the agreement, the person shall, for the remainder of

the term of operation of the agreement, be deemed to be a party to a like agreement with the trade union or council of trade unions.

(2) When an employers' organization commences to bargain with a trade union or council of trade unions, it shall deliver to the trade union, or council of trade unions a list of the names of the employers on whose behalf it is bargaining and, in default of so doing, it shall be deemed to bargain for all members of the employers' organization for whose employees the trade union or council of trade unions is entitled to bargain and to make a collective agreement at that time, except an employer who, either alone or through the employers' organization, has notified the trade union or council of trade unions in writing before the agreement was entered into that the employer will not be bound by a collective agreement between the employers' organization and the trade union or council of trade unions.

(3) A collective agreement between a certified council of trade unions and an employer is, subject to and for the purposes of this Act, binding upon each trade union that is a constituent union of such a council as if it had been made between each of such trade unions and the employer.

(4) A collective agreement between a council of trade unions, other than a certified council of trade unions, and an employer or an employers' organization is, subject to and for the purposes of this Act, binding upon the council of trade unions and each trade union that was a member of or affiliated with the council of trade unions at the time the agreement was entered into and on whose behalf the council of trade unions bargained with the employer or employers' organization as if it was made between each of such trade unions and the employer or employers' organization, and upon the employees in the bargaining unit defined in the agreement and, if any such trade union ceases to be a member of or affiliated with the council of trade unions during the term of operation of the agreement, it shall, for the remainder of the term of operation of the agreement, be deemed to be a party to a like agreement with the employer or employers' organization, as the case may be.

(5) Where a council of trade unions, other than a certified council of trade unions, commences to bargain with an employer or an employers' organization, it shall deliver to the employer or employers' organization a list of the names of the trade unions on whose behalf it is bargaining and, in default of so doing, it shall be deemed to bargain for all members or affiliates of the council of trade unions for whose employees the respective trade unions are entitled to bargain and to make a collective agreement at that time with the employer or the employers' organization, except a trade union that, either by itself or through the council of trade unions, has notified the employer or employer's organization in writing before the agreement is entered into that it will not be bound by a collective agreement between the council of trade unions and the employer or employers' organization.

**135.** Membership in an accredited employers' organization shall not be denied or terminated except for cause which, in the opinion of the Board, is fair and reasonable.

**137.-(3)** Where, on the complaint of an interested person, trade union, council of trade unions, employers' organization, employee bargaining agency or employer bargaining agency, the Board is satisfied that a person, employee, trade union, council of trade unions, affiliated bargaining agent, employee bargaining agency, employer, employers' organization, group of employers' organizations or employer bargaining agency, bargained for, attempted to bargain for, or concluded any collective agreement or other arrangement affecting employees represented by affiliated bargaining agents other than a provincial agreement as contemplated by subsection 148(1), it may direct what action, if any, a person, employee, trade union, council of trade unions, affiliated bargaining agent, employee bargaining agency, employer, employers' organization, group of employers, organizations, or employer bargaining agency, shall do or refrain from doing with respect to the bargaining for, the attempting to bargain for, or the concluding of a collective agreement or other arrangement other than a provincial agreement as contemplated by subsection 148(1).

**139.-(1)** In this section and in sections 137 and 140 to 155,

"affiliated bargaining agent" means a bargaining agent that, according to established trade

union practice in the construction industry, represents employees who commonly bargain separately and apart from other employees and is subordinate or directly related to, or is, a provincial, national or international trade union, and includes an employee bargaining agency; (“agent négociateur affilié”)

“bargaining”, except when used in reference to an affiliated bargaining agent, means province-wide, multi-employer bargaining in the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 119; (“négociation”)

“employee bargaining agency” means an organization of affiliated bargaining agents that are subordinate or directly related to the same provincial, national or international trade union, and that may include the parent or related provincial, national or international trade union, formed for purposes that include the representation of affiliated bargaining agents in bargaining and which may be a single provincial, national or international trade union; (“organisme négociateur syndical”)

“employer bargaining agency” means an employers’ organization or group of employers’ organizations formed for purposes that include the representation of employers in bargaining; (“organisme négociateur patronal”)

“provincial agreement” means an agreement in writing covering the whole of the Province of Ontario between a designated or accredited employer bargaining agency that represents employers, on the one hand, and a designated or certified employee bargaining agency that represents affiliated bargaining agents, on the other hand, containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer bargaining agency, the employers represented by the employer bargaining agency and for whose employees the affiliated bargaining agents hold bargaining rights, the affiliated bargaining agents represented by the employee bargaining agency, or the employees represented by the affiliated bargaining agents and employed in the industrial, commercial or institutional sector of the construction industry referred to in the definition of “sector” in section 119. (“convention Provinciale”)

(2) Where an employer is represented by a designated or accredited employer bargaining agency, the employer shall be deemed to have recognized all of the affiliated bargaining agents represented by a designated or certified employee bargaining agency that bargains with the employer bargaining agency as the bargaining agents for the purpose of collective bargaining in their respective geographic jurisdictions in respect of the employees of the employer employed in the industrial, commercial or institutional sector of the construction industry, referred to in the definition of “sector” in section 119, except those employees for whom a trade union other than one of the affiliated bargaining agents holds bargaining rights.

**140.** Where there is conflict between any provision in sections 141 to 154 and any provision in sections 5 to 58 and 63 to 138, the provisions in sections 141 to 154 prevail.

**141.**-(1) The Minister may, upon such terms and conditions as the Minister considers appropriate,

- (a) designate employee bargaining agencies to represent in bargaining provincial units of affiliated bargaining agents, and describe those provincial units;
- (b) despite an accreditation of an employers’ organization as the bargaining agent of employers, designate employer bargaining agencies to represent in bargaining provincial units of employers for whose employees affiliated bargaining agents hold bargaining rights, and describe those provincial units.

(2) Where affiliated bargaining agents that are subordinate or directly related to the different provincial, national or international trade unions bargain as a council of trade unions with a single employer bargaining agency for a province-wide collective agreement, the Minister may

exclude such bargaining relationships from the designations made under subsection (1), and subsection 148 (2) shall not apply to such exclusion.

[emphasis added]

**146.-(4)** A voluntary recognition agreement in so far as it relates to the industrial, commercial and institutional sector of the construction industry shall be between an employer on the one hand and either,

- (a) an employee bargaining agency;
- (b) one or more affiliated bargaining agents represented by an employee bargaining agency; or
- (c) a council of trade unions on behalf of one or more affiliated bargaining agents affiliated with the council of trade unions,

on the other hand, and shall be deemed to be on behalf of all the affiliated bargaining agents of the employee bargaining agency and the defined bargaining unit in the agreement shall include those employees who would be bound by a provincial agreement.

**148.-(1)** An employee bargaining agency and an employer bargaining agency shall make only one provincial agreement for each provincial unit that it represents.

(2) On and after the 30th day of April, 1978 and subject to sections 141 and 147, no person, employee, trade union, council of trade unions, affiliated bargaining agent, employee bargaining agency, employer, employers' organization, group of employers' organizations or employer bargaining agency shall bargain for, attempt to bargain for or conclude any collective agreement or other arrangement affecting employees represented by affiliated bargaining agents other than a provincial agreement as contemplated by subsection (1), and any collective agreement or other arrangement that does not comply with subsection (1) is null and void.

The applicable Labourers' employee designation order (there are three Labourers' designation orders), which is mirrored by the employer designation order, reads as follows:

The designation of The Labourers' International Union of North America and The Labourers' International Union of North America, Ontario Provincial District Council dated April 21, 1978, amended July 13, 1978 and December 6, 1978, is further amended by excluding from this designation the bargaining relationship between the Metropolitan Toronto House Wreckers Association and The Labourers' International Union of North America, and The Labourers' International Union of North America, Ontario Provincial District Council so that the designation reads as follows:

Pursuant to clause *a* of subsection 1 of section 139 [now section 141] of The Labour Relations Act, R.S.O. 1970, c. 228, as amended, I hereby designate The Labourers' International Union of North America and The Labourers' International Union of North America, Ontario Provincial District Council as the employee bargaining agency to represent in bargaining all construction labourers, including masons' or bricklayers' tenders, plasterers and plasterers' apprentices and all employees engaged in cement finishing, waterproofing or restoration work, represented by the following affiliated bargaining agents:

- 1. The Labourers' International Union of North America; or
- 2. The Labourers' International Union of North America, Ontario Provincial District Council; or
- 3. The following Local Unions: 183, 247, 491, 493, 506, 527, 597, 607, 625, 749, 837, 1036, 1059, 1081 and 1089; or
- 4. Any other Local of The Labourers' International Union of North America which, in the future, may be chartered to represent construction labourers,

including masons' or bricklayers' tenders, plasterers and plasterers' apprentices, and employees engaged in cement finishing, waterproofing or restoration work;

(Which Council and Unions are hereinafter collectively referred to as "the Unions"), in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and without limiting the generality of the foregoing, to represent in bargaining as aforesaid all employees bound by or parties to:

- (a) certificates of the Ontario Labour Relations Board granted to the Unions or any of them;
- (b) voluntary recognition agreements with the Unions or any of them;
- (c) collective agreements to which the Unions or any of them have been or are party to or bound by, covering the industrial, commercial and institutional sector of the construction industry in the Province of Ontario.

For purposes of clarity, it should be noted that notwithstanding the fact that locals set out in paragraph 3 above are affiliated bargaining agents within the meaning of clause *a* of section 137 [now section 139], certain of them have or may acquire bargaining rights, or are, or may become bound by, certain collective agreements affecting all sectors of the construction industry covering all employees engaged in concrete forming construction, namely the agreement between Locals 183 and 1081, and the Ontario Form Work Association and between Local 493 and Romm Construction Company Limited, whereby they represent employees who do not commonly bargain separately and apart from other employees. Therefore, with respect to bargaining on behalf of employees of members of the Ontario Form Work Association and Romm Construction Company Limited, and such other employers for whom any of the local unions have or may acquire bargaining rights for all employees engaged in concrete forming construction, such locals are not affiliated bargaining agents within the meaning of clause *a* of section 137 [now section 139], nor are they included in or covered by this designation under subsection 1 of section 139 [now section 141], nor are they or the said collective agreements and bargaining thereunder affected by section 133 [now section 135] of The Labour Relations Act.

Pursuant to subsection 2 of section 139 [now section 141] of The Labour Relations Act, *I hereby exclude from this designation the bargaining relationship between the Formwork Council of Ontario and the Ontario Form Work Association.*

Pursuant to subsection 2 of section 139 [now section 141] of The Labour Relations Act, *I hereby exclude from this designation the bargaining relationship between the Metropolitan Toronto House Wreckers Association and The Labourers' International Union of North America and The Labourers' International Union of North America, Ontario Provincial District Council.*

[emphasis added]

17. In our view, *Rockwell, supra*, was correctly decided. In that case the employer claimed that it was only bound to what it called a multi-sector formwork agreement with Labourers' 1059 which did not apply outside of Board Area No. 3 (the London area). Labourers' 1059 confirmed that this "local forming agreement" would apply to all concrete forming work in all sector of the construction industry including the ICI sector in Board Area No. 3 only. Labourers' 1059 asserted the right to make its own local bargain with respect to ICI formwork as a recognized exception to the provincial ICI bargaining scheme. In finding that this "local formwork agreement" was a collective agreement or arrangement which was null and void, pursuant to section 148(2) of the Act, insofar as it related to the ICI sector of the construction industry, the Board in *Rockwall, supra*, reasoned that:

25. There are a number of difficulties with these propositions. First, it is not obvious how the Minister, in the exercise of his/her power of "designation and description", can declare that something which is clearly an affiliated bargaining agent as a matter of statutory definition, and

is so recognized in the designation itself, is not an affiliated bargaining agent in some circumstances or for certain purposes not recognized by the statute, - especially when section [141(2)] quite specifically deals with the limited circumstances in which bargaining relationships may be excluded from the designation and therefore the provincial ICI regulatory scheme. It is not at all clear how an affiliated bargaining agent meeting the definition of section [139(1)(a)] can cease to be an affiliated bargaining agent for some purposes by Ministerial decree; moreover, if the Minister's authority to "designate" and "describe" extended that far, section [141(2)] of the Act would be entirely unnecessary. The Minister could simply "describe" the designated bargaining agency and the ambit of its authority, so as to exclude any local or other arrangement which the Minister considered appropriate - even if that arrangement applied to the ICI sector. We doubt that that was what was intended by the Legislature or that the Legislature intended that exemptions from the designation might be made (and therefore exemptions from the provincial bargaining scheme would be created) other than in accordance with section [141(2)] of the Act.

26. Rockwall's local formwork agreement clearly does not meet the requirements of section [141(2)]. *Rockwall is not an employer bargaining agency (see the definition of that term in section 137(1)(d)). Rockwall does not bargain with a council of trade unions. Rockwall's purported agreement is not province-wide.* Indeed, even a close reading of the terms of the designation does not unequivocally support Rockwall's proposed interpretation, because the reference to multi-sector forming agreements, which might, by itself, suggest any number of them, is followed by the word "namely" indicating that the Minister had only two specific collective agreements in mind. We accept Local 1081's position that, despite some ambiguity in the language, what the Minister was exempting was the Form Work Council agreement and any other Labourers' local which might choose to opt into that agreement. Finally, it should be noted that in the penultimate paragraphs of the designation, where the Minister is expressly exercising the authority granted to him under section [141(2)] of the Act, it is only the bargaining relationship between the Form Work Council and the Ontario Form Work Association which is excluded from the designation. Therefore, even if the Minister could exclude these other local arrangements from the provincial bargaining scheme (and, for reasons already mentioned, we doubt that such exclusion could be authorized other than under section [141(2)]) the terms of the designation do not establish such Ministerial intention. When read as a whole, we think that, insofar as formwork is concerned, the Minister intended only to exempt from the provincial scheme, ICI formwork which was subject to a pre-existing, provincial formwork agreement, conforming to the requirements of section 139(2). Rockwall's agreement does not.

[emphasis added]

In *Shearwall Forming (East) Ltd.*, [1989] OLRB Rep. Dec. 1254, the Board commented on the doubts expressed in paragraph 25 of *Rockwall*, *supra* as follows:

• • •

14. Although the Board has previously expressed some doubts as to the ability of the Minister of Labour to declare or deem something which is an affiliated bargaining agent to not be one (see *Rockwall Concrete Forming (London) Limited*, [1988] OLRB Rep. Sept. 963), it is clear, as the Board recognized in *Ellis-Don Limited*, [1988] OLRB Rep. Dec. 1254 (at paragraph 36), that neither the Council nor any of its constituent trade unions are a designated employee bargaining agency or an affiliated bargaining agent of one with respect to employees engaged in concrete forming construction (see also *Matterhorn Construction (Hamilton) Limited*, [1981] OLRB Rep. Sept. 1276 at paragraphs 6 and 7). *Concrete form work has not been exempted or excepted from the province-wide ICI collective bargaining scheme in a general way. Rather, there is a limited exception or exemption which has been made for some concrete forming construction collective bargaining relationships to the extent, and only to the extent, that such specific relationships have been so exempted.* The agreements relied upon by the Council and the respondents in these proceedings are section [146(5)] type of collective agreements in the sense that they apply to section [146(5)] type bargaining units. Sections [146(1)] through (4) do not apply to these units and, in that sense, the Council is in no different position than other construction trade unions, like the CLAC, which are neither employee bargaining agencies nor affiliated bargaining agents of one.

[emphasis added]

18. The Board's decision in *Rockwall, supra* is not inconsistent with *Verdi Forming Limited, supra*. In *Verdi Forming Limited, supra*, the Board merely confirmed the obvious; that is, that the Ontario Formwork Agreement is valid for formwork in the ICI sector. In *Rockwall, supra*, the Board found, correctly in our view, that a local forming agreement or arrangement which is in no way connected with the Ontario Formwork Agreement is not a valid one insofar as it relates to the ICI sector.

19. Notwithstanding the Board's comments in *Shearwall, supra*, which might suggest otherwise, we agree with the Board's conclusion in *Rockwall, supra* that the Minister cannot decree that a trade union which is an affiliated bargaining agent within the meaning of section 139(1) of the *Labour Relations Act* and is so identified in a designation order is not an affiliated bargaining agent for some ICI purposes. Section 141(2) of the Act does not empower the Minister to so decree; it only empowers the Minister to exclude a bargaining relationship between two or more affiliated bargaining agents which bargain as a council of trade unions with a single employer bargaining agency with respect to the ICI sector from a designation and section 148(2) of the Act; that is, to exempt such a bargaining relationship from the ICI provincial bargaining scheme and the prohibitions of section 148(2) in that respect. (We note with respect to Engineers 793, which is part of the Formwork Council of Ontario and is bound by the Ontario Formwork Agreement, that the Operating Engineers Employer and Employee designation orders also exempt the bargaining relationship between the Formwork Council of Ontario and the Ontario Formwork Association but contain no clarity note or other suggestion that Engineers 793 is not an affiliated bargaining agent for that purpose.)

20. We also agree with the finding in *Rockwell, supra* (and in *Shearall, supra*) that the only bargaining relationship which has been excluded or exempted from the Labourers' designation orders herein is the bargaining relationship between the Ontario Formwork Association and the Ontario Formwork Council.

21. The question in this case is whether the London Forming Agreement falls within that exclusion.

22. If it was a pure pick-up agreement there would be no "London Forming Agreement", there would only be an agreement pursuant to which the London Contractors agree to be bound to the Ontario Formwork Agreement for all purposes and to be represented in bargaining in that respect by the Ontario Formwork Association. The London Forming Agreement does purport to do that for the ICI sector. Labourers' 1059 appeared to suggest that the London Contractors are bound by the Ontario Formwork Agreement if they perform any concrete formwork outside of Board Area No. 3. Although the London Contractors did not specifically disagree with this assertion, they did not agree with it either. What they did say was that "the London Forming Agreement is a pick-up agreement for purposes of ICI forming work".

23. The wording of Article 1 of the London Forming Agreement purports to limit its operation to Board Area No. 3 in all sectors of the construction industry, including the ICI sector. By operation of section 146(4) of the *Labour Relations Act*, Article 1.02 has the effect of binding the London Contractors to the Ontario Formwork Agreement for ICI forming work throughout Ontario. The same cannot be said for non-ICI forming work. There is no provision in the Act analogous to section 146(4) which applies to non-ICI construction work and the terms of the London Forming Agreement specifically limit its non-ICI application to Board Area No. 3. In addition, there are differences between the London Forming Agreement and the Ontario Formwork Agreement. For example, there is no equivalent to Article 3.01(c) of the former in the Ontario Formwork Agreement, the London Forming Agreement provides for a wage rate premium for working

foremen and the Ontario Formwork Agreement appears not to for Labourers 1059, and there are differences between the grievance, business representative, jurisdictional disputes, safety, sanitation and shelter, and employer contributions and remittances provisions in the two agreements. In addition, Article 28 of the London Forming Agreement requires an employer to maintain the terms and conditions of that agreement for employees it requires to work "outside of the geographic area covered by this agreement", which suggests a kind of "in and out of Board Area No. 3" coverage in other than the ICI sector. At the same time, Article 1 of Labourers' 1059 Appendix to Schedule "E" of the Ontario Formwork Agreement (which prevails in the event of a conflict with the master portion) provides that the London Forming Agreement applies to members of Labourers' 1059 to the extent that concrete forming work is not covered by the Ontario Formwork Agreement. All of this suggests that there is work covered by the London Forming Agreement which is not covered by the Ontario Formwork Agreement, namely non-ICI work.

24. Pick-up agreements are common in the construction industry. In essence, they are agreements between one or more employers with one or more trade unions pursuant to which the employer(s) agrees to abide by specific collective agreements in specified circumstances. In this case, the London Contractors have "picked up", or are deemed to have "picked up" pursuant to section 146(4) of the *Labour Relations Act*, the Ontario Formwork Agreement with respect to concrete forming construction work in the ICI sector of the construction industry throughout the province of Ontario. They have not "picked up" that portion of the Ontario Formwork Agreement which relates to non-ICI concrete forming work.

25. For purposes of this application, does it matter that the London Contractors have "picked up" only part of the Ontario Formwork Agreement? No it does not. The province-wide bargaining provisions of the *Labour Relations Act*, including section 148, are primarily concerned with the ICI sector and only incidentally with the non-ICI sectors. Similarly, while the exemption in the Labourers' employer and employee designation orders encompasses the entire Ontario Formwork Agreement bargaining relationship, it is only significant for purposes of the ICI sector.

26. In the result, we are satisfied that insofar as the London Forming Agreement relates to the ICI sector, it operates to bind the London Contractors to the Ontario Formwork Agreement which is the product of the bargaining relationship which has been specifically exempted from the prohibitions of section 148(2) of the *Labour Relations Act*. It is therefore not a collective agreement or arrangement which contravenes section 148(2) of the *Labour Relations Act*. Nor is there any overlap between the two agreements such that section 50 of the Act has been breached.

27. This application is therefore dismissed.

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**0769-92-M** United Brotherhood of Carpenters and Joiners of America, Local 18, Applicant v. **Matthews Contracting Inc.**, Responding Party v. Labourers' International Union of North America, Ontario Provincial District Council, Intervenor

**Construction Industry - Sector Determination - Board finding construction of underground concrete water storage tank to be work in the ICI sector of the construction industry, and not in heavy engineering sector or sewer and watermain sector as asserted by Labourers' union - Declaration issuing accordingly**

**BEFORE:** *S. Liang Vice-Chair, and Board Members D. A. MacDonald and J. Redshaw.*

**APPEARANCES:** *David McKee and Bill Veitch for the applicant; Richard J. Charney, Oliver Toffol and Brian Chambers for the responding party; and John Moszynski, Tony LaMacchia and Mike Popovich for the intervenor.*

**DECISION OF THE BOARD;** December 16, 1993

1. This is a sector determination. On August 24, 1993, the Board provided its "bottom-line" ruling on this case, finding that the work at issue is work in the industrial, commercial and institutional sector ("ICI") of the construction industry of Ontario. We now provide our reasons for that ruling.

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2. We begin with a summary of the facts, which we have necessarily abbreviated in our recounting. In providing the following summary, we have reviewed the oral evidence, the written documents and materials provided to us, and the representations of the parties. Where necessary, we have reconciled conflicts in the oral evidence. The latter part of this case proceeded in a particular manner which was agreed to by the parties (see our decision of June 3, 1993), and which involved the submission of written factual statements in place of a number of witnesses. In making our findings, we have not found it necessary to rely on any factual assertion contained in the written materials to which the other parties have not specifically indicated their agreement (in writing or in their representations), nor have we found it necessary to resolve any factual disputes as between the oral evidence and the written statements of fact.

3. The work which is the subject of this dispute is an underground concrete water storage tank on Strachan St. in Hamilton, adjacent to the waterfront. The work started on April 1, 1992. The work was contracted for by the Regional Municipality of Hamilton Wentworth ("the Region"), and was performed by Matthews Contracting Inc. (herein called "Matthews", "the company" or "the employer").

4. The Region is responsible for sewage treatment. The project essentially consisted of building an underground water storage tank about 40 metres by 80 metres. On top of the tank is a parking lot. Before the tank was built, storm water and sewage overflow ran into the bay. The purpose of the tank is to receive that material and store it until there is capacity at the sewage treatment plant to process it. There is a pumping station connected to the tank which will pump the dirty water to the treatment plant, about 4 to 5 miles away. Once the water is treated at the plant, it will then go back into the bay. The tank was located at this site for convenience, as there were existing pipes into the bay, the site was available, and there was an existing sewage pumping station on the site that could be modified.

5. The building of the tank is at the core of the contract undertaken by Matthews. However, the contract also included work which was necessitated by the building of the tank, such as roadwork and sewer and watermain work, which is not the subject of the present sector dispute.

6. In addition to serving a holding function, the tank also performs a settling function. The water sitting in it will settle out and if more comes in before it can be treated, the water on top, which is cleaner, will flow out. There is a flushing device in the tank so that the sludge that settles at the bottom of the tank can be flushed. The Region has built a previous storage tank with the same function. In deciding on the design of the Strachan tank, they reviewed the operation of the other tank and decided to use a different and better flushing system.

7. A typical water treatment plant receives water from a river or lake, which goes through a chemical process to be treated. Then the chemicals are removed, the water is made clear, fluorinated if necessary, and is sent into a water line. Sewage treatment requires liquids to go through clarifiers and settlers, sludge digesters, and a chlorine contact chamber, which are then sent back into the river/lake or a water line. The end product in every case is cleaner water. Typically, water and sewage treatment plants are run by a municipality. Industries, such as Ontario Hydro and mining companies, may also have their own water treatment plants.

8. The evidence was that the City of Hamilton required a building permit for the work on the tank. No architect was involved in the project; however, the project required an engineer.

9. The equipment used included a mobile crane. A mobile crane was more suitable than a tower crane because the project did not require the height of a tower crane and did require the mobility. Bulldozers and backhoes were used for the excavation and backfill. These are the same machines that would be used for building construction, though a greater number were used on this site because there was a larger area and bigger volume to be excavated.

10. One of the specific problems that had to be overcome on this project was the problem of ensuring that the tank would stay in place. Because of wet soil conditions, when the tank is empty, there is a risk of floating upwards in the soil. Therefore, the tank had to be anchored down. Because of the wet soil, the method used was 12 metre caissons. Soil caissons have been used in the building of a number of structures along the Hamilton waterfront, but in those structures, the caissons served a load bearing purpose. If the tank had been built on a hill, instead of near the water table, anchors would not have been required to hold the tank down. If instead of a tank, the Region had built a building on this site, there would have been the same problem of upward pressure. Caissons are also used in road building and bridges.

11. Another construction problem posed by the site was the need to keep water out of the excavated areas. Matthews used Cofferdams, which are sheet piles driven into the ground to form a dam around an excavated area so that it can be worked in without water flowing in. Again, the construction of a building on this site would have posed the same problem. If the project was a building instead of a tank, a different method of keeping water out might have been used. For instance, Matthews might have employed a type of pile that would have been incorporated into the structure itself, instead of temporary sheet piles. In any event, however, the problem that required the use of the piles was the site condition, and not the type of structure being built. The choice of piles to be used may depend on the structure to be built but is essentially a matter of economics.

12. Matthews used the EFCO forming system for the tank, which is a steel formwork system used in concrete forming regardless of sector. The forming for the job was straightforward and involved standard procedure. The forms were assembled for a section. Once the concrete was cured and dried, the form was then lifted as a whole panel to be used on the next section. No

unique skills were required for this forming. The same skills are used in the formwork of this structure as on typical ICI work. The same set of formwork was used for both the tank and the box culverts. Matthews used the same work force of Labourers interchangeably for the work on the tank and on the box culverts. Matthews asserts that it would be inefficient to have a different crew of people for the forming on the box culverts as on the tank because one crew could be kept continuously occupied going back and forth between the parts of the project.

13. Matthews is a general contractor involved in many kinds of work in many different sectors. It doesn't restrict itself in the type of work it will bid on. Matthews has had collective agreements with the Labourers for many years, although not with the Carpenters until recently. With the signing of a "peace agreement" between the Carpenters and Labourers in Board Area 8, which precluded the Labourers from doing Carpenters' work in the ICI, Matthews entered into negotiations with the Carpenters which culminated in a voluntary recognition agreement.

14. Thus, until recently, it has never been an issue for Matthews what was ICI work and what was not ICI work, since it had agreements with the Labourers which covered a broad range of sectors. If work was arguably Labourers work, Matthews would use the Labourers to do it, under whatever agreement the Labourers were prepared to apply. On this project, the work was done by the Labourers under the terms of the HAND agreement, which is a local agreement between Local 837 of the Labourers and the Hamilton and Niagara District Association of Sewer, Watermain and Road Contractors. This agreement is incorporated by reference into the Labourers' Civil Engineering Agreement between the LIUNA Ontario Provincial District Council on behalf of its affiliated local unions and the employers signature to it, including Matthews, covering work in the sewer and watermain, road building and heavy construction sectors.

15. There were a variety of trades on the project as a whole. There was some electrical/mechanical work, some reinforcing steel, masonry, and work which required operating engineers. All work other than electrical/mechanical, reinforcing steel, and operating engineers' work was done by the Labourers. The electrical work was done by a non-union sub-contractor. The mechanical work was done under the provincial ICI agreement covering the pipefitting trade. Both the reinforcing steel work and the operating engineers work was done under collective agreements covering both heavy engineering and the ICI.

16. For the most part it appears that there have been two discrete sets of contractors doing the work of installing concrete water storage tanks, whether underground or as part of sewage or water treatment plants. Generally speaking, one set of contractors works under ICI provincial agreements, employing both Carpenters and Labourers under their respective ICI agreements. Also generally speaking, another set of contractors, which does not have bargaining rights with the Carpenters, does the work using only Labourers to do the forming, under non-ICI agreements. It is fair to say that where the contractor has a bargaining relationship *only* with the Labourers, the parties treat the work as non-ICI. Where the contractors have a bargaining relationship with both the Labourers and the Carpenters, they have almost always performed the work under the ICI agreements, including, in two cases, contractors which were bound to both the Labourers ICI and Civil Engineering Agreement.

17. Where similar work has been done as part of the construction of a sewage treatment plant or water treatment plant, the work has, to a much greater degree, been done by the first set of contractors (ie. working under ICI collective agreements). Where the work has been the installation of a tank only, the work has been done more often by the first set of contractors, though the difference is narrower. Sometimes, the two sets of contractors bid on the same work, as was the case on this project.

18. Although the Labourers take the position, which was disputed, that the Carpenters ICI agreement in fact covers work in the heavy engineering sector, on our review, we do not find that it does. We are therefore satisfied that when similar work has been done by other contractors under the terms of the Carpenters' provincial agreement, it was done under the terms of an *ICI* agreement.

19. The Carpenters were contacted about the availability of workers under their ICI agreement by some of the contractors in preparation for their bids on this project. Many of the contractors on the list of bidders are bound to either the Labourers' Civil Engineering Agreement or the HAND agreement directly, or another Labourers' non-ICI agreement. Three of the bidders are bound to the ICI agreements with the six civil trades (including carpenters and labourers) and two of these three submitted their bids on the basis of the ICI agreements.

20. Similar work to the Strachan tank has been done in the Hamilton and Niagara region under the terms of the HAND agreement on at least six previous projects. From about 1980 to the early 1990's, Matthews has been responsible for the construction of or additions to about 7 or 8 water or sewage treatment/water pollution control plants throughout the province, involving the construction of large concrete tanks, on which it applied non-ICI collective agreements.

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21. The Labourers assert that this project is in the heavy engineering sector of the construction industry. In the alternative, they state that it is open to the Board to find that it is work in the sewer and watermain sector. Counsel submits that the Board should inquire first as to the end use of the project. If the end use is clearly industrial, commercial or institutional, then the work is ICI, notwithstanding that the work is similar to work which may also be undertaken in the heavy engineering sector. Here, there is no industrial, commercial or institutional element to the use for which the tank is intended. The purpose of the project is to improve the flow of sewers, not to serve some ICI use.

22. In the submission of the Labourers, the Board can draw no meaningful distinction between the work included in this project which all parties acknowledge is in the sewer and watermain sector, and the work on the tank itself.

23. Further, the construction problems which were presented by this project were engineering problems. No architect was engaged in the project. The problems and solutions encountered on this project are similar to the problems and solutions arising in work on locks, dams and bridges, all of which are clearly in the heavy engineering sector.

24. It is submitted that most of the employers bidding on this project saw it as falling under the Labourers Civil Engineering collective agreement. There has been much work which is similar to this project which has been done throughout Ontario under non-ICI collective agreements. Clearly, where a contractor has a bargaining relationship with the Labourers only, those parties have treated similar work as non-ICI work. Ultimately, the evidence as to the characteristic employment relations on this type of project reveals that different contractors bid on the work and treat it as coming within a given sector depending on the particular collective bargaining relationships to which they are party.

25. In the submission of counsel for the employer, the Board should ask itself whether this structure is more like structures in the ICI, or more like infrastructure like bridges which are designed to support other things. It is important for the Board to have regard to the fact that no architects were required for this project. The problems faced on this project were primarily engi-

neering problems as distinct from design or architectural problems. On this basis alone, this project can be characterized as a project in the heavy engineering sector. If this is not enough, the evidence of the end use of the project points to its use as part of a sewer and watermain process. Either way, what is clear is that the project has no connection to the ICI.

26. In the submission of counsel for the Carpenters, the *Labour Relations Act* defines "sector" as a "division of the construction industry as determined by work characteristics". The factors which the other parties rely on to support their position that this project is in the heavy engineering sector are not very helpful because they do not actually *distinguish* one sector from another. For instance, the major problem on this project was the soil conditions, which necessitated the use of caissons. Since this problem would have existed regardless of the type of structure built on this site, it would be incorrect to rely on the use of caissons (as an engineering *type* of problem as contrasted with an architectural *type* of problem) as determining the sector in which this work belongs. In fact, the only "work characteristic" on this project which can meaningfully distinguish between the ICI and other sectors is the fact that a building permit was required.

27. The fact that no architect was required on the job cannot be determinative, since architects are not essential to many industrial structures. Under the *Architects Act* and *Professional Engineers Act*, both architects and professional engineers are entitled to provide designs for large buildings intended for industrial occupancy, although only a professional engineer may provide services in connection with such a building that relate to engineering issues.

28. Counsel disputes that this tank should be considered as part of the sewer system. Rather, this tank is part of an industrial process, whose end product is clean water. As contrasted with other projects in other sectors, such as bridges and canals, the process which the tank serves transforms raw materials, ie. dirty water, into an end product.

29. Counsel for the Carpenters analyzed the evidence of the employment relations on other similar projects, arriving at the conclusions set out in our summary of facts above with respect to the type of contractors and collective bargaining relationships that have characterized this type of work.

30. The Board was referred to the following cases in argument: *The Heavy Construction Association of Toronto*, [1973] OLRB Rep. May 245; *Ecodyne Limited*, [1979] OLRB Rep. July 629; *West York Construction Ltd.*, [1983] OLRB Rep. Dec. 2132; *Sword Contracting Limited*, [1985] OLRB Rep. May 743; *Ambro Materials and Construction Limited*, [1987] OLRB Rep. July 948; *Steen Contractors Limited*, [1989] OLRB Rep. Nov. 1173; *Future Care Limited*, [1990] OLRB Rep. Aug. 844; *Dufferin Construction Company*, *The Foundation Company of Canada Limited*, *Dufferin Construction Company et al*, Aug. 31, 1992 [unreported]; *The General Contractors' Section of the Toronto Construction Association*, [1971] OLRB Rep. Nov. 719; *Mechanical Contractors Association Hamilton*, [1972] OLRB Rep. Nov. 923; *National Capital Roadbuilders Association*, [1988] OLRB Rep. June 604; *Sikora Mechanical Ltd.* [1982] OLRB Rep. June 941; *Bird Construction Company Limited*, [1984] OLRB Rep. Dec. 1688; *Sutherland-Schultz Limited*, [1988] OLRB Rep. June 632; *Gisar Contracting Limited*, [1985] OLRB Rep. April 528; *Ellis-Don Limited*, [1988] OLRB Rep. Dec. 1254; *Shearwall Forming (East) Ltd.*, [1989] OLRB Rep. Dec. 1254.

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31. Section 119 of the Act defines "sector" in the following manner:

"sector" means a division of the construction industry as determined by work characteristics and

includes the industrial, commercial and institutional sector, the residential sector, the sewers and watermains sector, the roads sector, the heavy engineering sector, the pipeline sector and the electrical power systems sector;

32. *The Heavy Construction Association of Toronto, supra*, an early Board case to which all parties referred, applies and interprets the notion of “sector” under the Act. In that case, the Board analyzed the definition of “sector” (which, with one change that does not concern us, has remained the same throughout the intervening years) and in particular, how one of the enumerated sectors contained in that definition could meaningfully be distinguished from another:

10. We must thus turn to an examination of the meaning of section 106(e) [now 119] of the Act which defines the term sector. An examination of that definition indicates that it contains three components. The first component is that sector is a division of the construction industry. The term construction industry is defined in the *Labour Relations Act* in section 1(1)(f) [now 1(1)] which reads as follows:

1.-(1)(f) “construction industry” means the business that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at the site thereof.

Although certain terms appearing in the definition of construction industry also appear in clause (e) of section 106, the relationship between these two definitions is not sufficient to afford any assistance in interpreting the meaning of the term sector.

11. The second component of the definition in clause (e) of section 106 sets out the method by which divisions of the construction industry are to be determined. Thus, the divisions of the construction industry which constitute sectors are to be “determined by work characteristics”. On the other hand the expression “work characteristics” is one which is open to a variety of meanings and the problem of interpreting this section is largely one of ascribing the correct meaning to this expression.

12. The third and remaining component of the definition of sector is the enumeration of seven sectors of the construction industry which are included as meanings of the term sector of the construction industry. These, in turn, raise the additional problem of ascribing the correct meaning to each of the individual sectors so enumerated.

13. Although the definition of sector can be broken down into these three component parts, clearly the starting point in interpreting the statutory language used in the definition is the observation that they constitute one definition in the Act. Thus, it is clear that when the legislature enumerated the specific sectors set out in the definition it must be taken to have applied the test set out in that section when enumerating the sectors named therein. That is to say the enumerated sectors are divisions of the construction industry determined by work characteristics. Thus, the enumerated sectors give us a key to interpreting the expression “work characteristics” and in turn once the expression work characteristics is clarified this will provide assistance in the correct interpretation of each of the enumerated sectors.

14. An examination of the enumerated sectors in clause (e) of section 106 leads to the conclusion that for all but one of the sectors listed the names given to these divisions of the construction industry relate to the use which is ultimately made of the construction. At first this may appear to be somewhat of a puzzle in that the connection between the use of the construction and the work characteristics may not be obvious. Upon examination, however, it becomes clear that the use that is ultimately made of the construction will to a large extent determine the task or the work to be performed at the construction site. The task in turn will have certain characteristics which make that project distinguishable from other types of construction. Thus, each of the sectors enumerated, by focusing on the different end uses of the construction, distinguishes one type of construction from other types of construction on the basis of peculiar tasks which are common to that type of project. The work characteristics which distinguish one sector from the other sectors of the construction industry may be shown in terms of the type of problems to be dealt with at the job site, the types of solutions resorted to at certain job sites, the material

used, the relative importance of various specifications, the variety of skills and trades, and certain characteristic relations with employees. This list of characteristics is not to be thought of as exhaustive, but as examples of particular characteristics which differ between the various sectors enumerated in the Act.

15. Having given a meaning to the test for determining sectors on the basis of work characteristics we can now turn to use this meaning as a tool for obtaining the criteria which separate one sector from another sector of the construction industry. However, as noted above there is one sector which unlike the other sectors enumerated in the Act does not refer to the end use made of the construction in that sector. This is the heavy engineering sector, which is the subject matter of this application. The name of this sector comes from the view that the division of the construction industry with which it is concerned has distinct peculiarities. As the name implies the problems faced in such construction projects are primarily engineering problems as distinct from design or architectural problems. Thus, for instance, these are projects in which it is more important that they serve their intended function rather than be attractive. The other characteristic of construction in this sector is that it involves the use of "heavy equipment". That is equipment which is capable of lifting, for example, heavy steel or concrete beams or equipment that is capable of moving huge amounts of earth, stone or concrete. Perhaps the classic example of a heavy engineering project is the construction of a large bridge.

16. However, if we try to define the heavy engineering sector in terms of the emphasis of engineering problems and the use of large scale equipment, we are confronted with the problem that these two characteristics are not sufficient to distinguish projects which clearly fall into the other enumerated sectors. Thus, for instance, the construction of a large refinery, steel mill, power station or sewage settling basin may have these same characteristics. We are thus faced with the potential conflict that any project in any of the other sectors can arguably be placed in the heavy engineering sector if the problem is an engineering problem and the equipment used is large scale or heavy equipment. Clearly, section 106(e) should not be interpreted in a way to allow such an ambiguity or uncertainty as to the meaning of the term "sector". The problem, however, is not difficult to overcome. As pointed out earlier, the other sectors are defined in terms of the use ultimately made of the construction. This has the clear advantage of determining the sector at the earliest stages of the project. Thus any uncertainty as to whether the project falls in one sector or another can be removed even before work has commenced at the job site. The removal of such an uncertainty is, of course, a desirable goal in labour relations and indeed the legislature in its wisdom has seen fit to remove the uncertainty from the definition by labelling the other sectors with names designating the end use of the project.

33. Particularly significant to the case before us is the Board's discussion above of the distinction between the heavy engineering sector and the other sectors enumerated in section 119. We distill from that discussion the following principle for the purposes of the case before us: that the work in question is in the heavy engineering sector if its end use is *not* industrial, commercial, institutional (or related to sewer and watermain, which was the alternative argument proposed by the Labourers and by Matthews), if the problems faced on the construction project are primarily engineering as distinct from design or architectural problems, and if there is use of "heavy equipment".

34. In our view, the end use of the tank falls within the ICI. It is part of a process of sewage treatment and water pollution control. To the extent that industrial projects are about the processing or transformation of raw materials, this tank is one element or stage in the processing of sewage overflow and storm water overflow into clean water. If this tank were located directly in a processing facility, we would have no trouble considering it as part of the process. The fact that it is physically separate from the processing plant does not change its nature, in our view, since it was clearly built as an extension to the system of water and sewage treatment.

35. It is true that the tank is located at the juncture of two "systems", the sewer system and the sewage treatment system. It was urged on the Board that because the contract by Matthews included the installation of sewer lines which all parties accepted as part of the sewer and watermain sector, it was not logical to view the construction of the tank as being in a different sector. To

the extent that Matthews performed all of the work itself, using an interchangeable work force, the responsibility for all aspects of the job has been integrated, regardless of sector lines.

36. Although at first blush, there is some logic to this position, we are not ultimately persuaded by it. First, this position gives undue weight to the manner in which this particular contractor viewed the project. It also gives undue weight to the particular collective bargaining relationship between Matthews and the Labourers on this site. As was clear from the evidence, these parties have never had to draw strict demarcation lines between sectors in respect to formwork, since Matthews has until recently *only* employed Labourers for this work, and has been bound to agreements with the Labourers covering forming in a number of different sectors. Although there are obvious advantages to such an approach for these two parties, it does not assist the Board to determine a sector issue once it has been raised, as it was here, by the introduction of another collective bargaining relationship which relies on a sector determination.

37. As well, where work exists at the juncture of two sectors, the Board will always have to find the appropriate dividing line. The parties acknowledge that if a similar tank were located inside an industrial facility, it would be considered as ICI work. Yet undoubtedly, such a tank would also be connected to outside sewer and watermain lines. Counsel for the Labourers asserts that this tank is no more in the ICI than is the toilet in one's home. This statement is telling, since we suspect that all parties would be surprised if it were asserted that the installation of a toilet in a home is work in the sewer and watermain sector since it is connected to outside sewer and water lines.

38. We thus conclude that the tank, as an adjunct to a system of treating sewage and water which we view to be an industrial process, is work in the ICI sector.

39. In keeping with the thoughts expressed in *The Heavy Construction Association of Ontario, supra*, it is unnecessary because of our conclusions as to the end use of this tank, to consider whether the work characteristics of this project are uniquely heavy engineering in nature. However, we provide some brief comments on these matters.

40. In general, we do not find the work characteristics of this project to point to a heavy engineering project. It is fair to say that the problems faced by this project were not primarily design or architecture, and in a sense they were engineering problems. But they were engineering problems associated with the site itself more than the structure, and therefore they were engineering problems which might well have been present if the project had involved the construction of a building on the same site.

41. We do not find that the type of equipment used on this project was distinctly "heavy equipment". There was no heavy lifting involved, of the kind necessary in the building of a bridge, for example. There was a lot of excavation in the sense that there was a large area to be dug, but the excavation was done with the same type of equipment that is used in virtually all other types of construction.

42. Our conclusion that the end use of this work is ICI is reinforced by the evidence as to the employment relations typical of this type of work throughout the province. Although the evidence is not totally unequivocal, we are satisfied that this type of work has tended to be performed by contractors bound to ICI collective agreements, using members of the trades which are covered by those agreements.

43. In answer to the issue put before us, therefore, we declare that the building of the Strachan Street water storage tank is work in the ICI sector of the construction industry.

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**2084-93-R Canadian Union of Professional Security-Guards, Applicant v. Meadowvale Security Guard Services Inc., Responding Party v. The Christian Labour Association of Canada (CLAC), Intervenor**

**Certification - Sale of a Business - Security Guard - Union applying to represent guards employed by condominium corporation at single location - Security company acquiring contract to provide security services at condominium two weeks later - Security firm already having collective agreement with rival union - Parties agreeing that security company should be named as employer in bargaining unit description - Rival union and employer asserting that collective agreement between them barring certification application - Board deferring consideration of certification application pending filing by interested party of sale of business application under section 64 of the Act**

**BEFORE:** *Louisa M. Davie*, Vice-Chair, and Board Members *F. B. Reaume* and *G. McMenemy*.

**APPEARANCES:** *E. C. Carla Zabek* and *James A. Whyte* for the applicant; *John Hughes* for the responding party; *Ron Rupke* and *Ed Bosveld* for the intervenor.

**DECISION OF THE BOARD;** December 1, 1993

1. This is an application for certification filed with the Board on September 23, 1993 ("the certification application date"). The application is in respect of employees who are essentially employed as security guards at a condominium location in Richmond Hill, Ontario.
2. On the certification application date the security guards at that location were employed by either York Regional Condominium Corporation 645 or Ontario Guard Services Inc.
3. On October 6, 1993 Meadowvale Security Guard Services Inc. ("Meadowvale") acquired the contract to provide security services at the condominium location and became the new employer of the employees employed as security guards at that location.
4. Meadowvale has a collective agreement with the Christian Labour Association of Ontario ("CLAC"). That collective agreement is effective from September 1, 1993 to August 31, 1996. The recognition clause of that collective agreement refers to a bargaining unit which appears to include the employees at the condominium location. The recognition clause states:

**ARTICLE 2 - RECOGNITION**

- 2.01 The Employer recognizes the Union as the sole bargaining agent of all employees in the bargaining unit as defined in Article 2.02 and as classified in Schedule "A" attached hereto and made part hereof.
- 2.02 (a) This Agreement covers all persons employed on all sites outlined in Schedule "B", save and except Patrol Supervisors and persons above the rank of Patrol Supervisor, dispatch personnel, Head or Branch office personnel employed as Managers, Client Service Representatives, sales staff, accounting and payroll staff, office and clerical staff.
- (b) Any new sites obtained by the Employer shall be added to Schedule "B", effective on the date on which the Employer enters into a contract with a client to provide services for that site.
- (c) Any sites currently operated by the Employer shall be added to Schedule "B" at such time when the Union has been chosen as bargaining agent by a majority of employees on that site.

5. An application pursuant to the successor employer provisions of the *Labour Relations Act* (section 64 of the Act) had not been filed by any party prior to the hearing of this matter on November 8, 1993.

6. Representatives of Meadowvale and the applicant union ("CUPSG") participated in the Board's usual telephone waiver process. During the course of that process these two parties agreed that the correct name of the responding party was "Meadowvale Security Guard Services Inc." and agreed upon the following bargaining unit description:

all security officers of Meadowvale Security Guard Services Inc. employed at 326 Major MacKenzie Drive East in the Town of Richmond Hill, save and except patrol supervisors and persons above the rank of patrol supervisor.

Representatives of CLAC did not participate in that telephone waiver process.

7. As the parties could not agree upon the status of CLAC to participate in this certification application and could not agree upon the effect, if any, of the collective agreement between Meadowvale and CLAC, the matter proceeded directly to hearing. More specifically, an issue arose as to whether that collective agreement constituted a bar to the certification application filed by CUPSG.

8. At the hearing counsel for the CUPSG asserted that the collective agreement between CLAC and Meadowvale did not act as a bar to the certification application because on September 1, 1993 (when the collective agreement became effective) and on September 23, 1993 (when the certification application was filed) Meadowvale was not the employer of the affected employees. Counsel for the CUPSG therefore requested "a certificate indicating that the [CUPSG] is the exclusive bargaining agent of the affected employees as of the date of our application for certification" because CUPSG had demonstrated it had more than fifty-five per cent support in the agreed-upon bargaining unit. Counsel submitted that by virtue of the successor employer provisions of the Act (and in particular section 64(2.1)), Meadowvale "steps into the shoes" of the predecessor employer and became the correct respondent in the certification proceedings. In addition, counsel argued that CLAC had no status to intervene in these proceedings as it did not represent any of the affected employees, was not the bargaining agent of such employees on the certification application date and had not filed any membership evidence on behalf of such employees.

9. Although the CUPSG's primary position was that the collective agreement between Meadowvale and CLAC was irrelevant, it asserted in the alternative that the collective agreement was not valid by reason of section 49 of the Act. Moreover, insofar as the collective agreement referred to future sites and future employees, the collective agreement constituted a voluntary recognition agreement of a bargaining unit which CLAC was not entitled to represent as it did not have majority, or any, support within that bargaining unit (see section 61(1) of the Act). CUPSG submitted that CLAC and Meadowvale ought therefore to be put to the strict proof of their collective agreement and CLAC's entitlement to represent the employees within this "expanded" bargaining unit.

10. Meadowvale was not represented by counsel at the hearing. Mr. John Hughes spoke on behalf of the corporate entity and took no position with respect to the status of CLAC to intervene in these proceedings. He submitted that the collective agreement was a valid collective agreement entered into after CLAC had been certified to represent several of the sites at which Meadowvale provides security services. The purpose of the broad recognition clause was to avoid future problems relating to "the intermingling of employees at sites" in the event Meadowvale acquired contracts to provide services to other sites. Some of the security guards employed by Meadowvale

move from site to site and Meadowvale wished to avoid the “administrative nightmare” which would result if employees were subject to a collective agreement at one site and not another. In a similar vein, Mr. Hughes expressed concern that he would prefer employees to be represented by a single trade union, not by different trade unions. Neither did he wish employees to be covered by different collective agreements depending on the site at which they worked at any particular time. It was his further position that it was up to the employees to choose which union they wished to have represent them, that he would abide by their wishes, but that he preferred to have “one union throughout the company”. Mr. Hughes emphasized he had no preference whether that union was CLAC or CUPSG.

11. It was not disputed by the representatives of CLAC that as of the date of application by the CUPSG it was not entitled to represent any of the employees in the agreed-upon bargaining unit. Its interest in the employees and the site however, arose when Meadowvale acquired the contract and became the employer of the employees affected by this application. Although it had no interest or status in these proceedings when the responding party was York Regional Condominium Corporation 645 or Ontario Guard Services Inc., once Meadowvale became the employer of the employees and, through application of section 64 of the Act the responding party to this certification proceeding, CLAC acquired an interest in the proceedings and by virtue of its collective agreement status to intervene. It was submitted that, although CUPSG can, or could have been certified with respect to the employees of York Regional Condominium Corporation 645 or Ontario Guard Services Inc., once CUPSG agreed that Meadowvale became the respondent, it had to consider the collective agreement between CLAC and Meadowvale.

12. The substance of the argument of CLAC is that with Meadowvale as a respondent comes Meadowvale with a collective agreement already in place. It was the position of CLAC, however, that the wishes of the employees with respect to choosing a trade union to represent them was significant. The CLAC representative therefore advocated that a run-off vote between the two unions be conducted to determine the wishes of the employees (a position opposed by CUPSG).

13. There are a number of issues which arise as a result of the facts surrounding this application. There is merit to each of the parties’ positions. It is our view, however, that the issues raised by these facts can only be properly addressed by the parties and, in the absence of agreement amongst them, can only be properly adjudicated by the Board in the context of a successor employer application. In particular, it is our view that the range of remedies and powers available to the Board to address the issues raised by the parties can only be found in the successor employer provisions.

14. In our view, in the context of this certification application, the ability of the Board to fashion an appropriate result (and one which makes labour relations sense) is somewhat circumscribed. For example, if the Board were to accept at face value the assertion that the correct respondent was Meadowvale and were to accept at face value the agreed-upon bargaining unit description reference to “employees of Meadowvale” without looking at any of the surrounding circumstances and the application of the successor employer provisions, the Board might conclude that the application for certification should be dismissed because, *on the certification application date*, Meadowvale did not have any employees in the bargaining unit (see section 8 of the Act). On the other hand, if Meadowvale is the employer, and by reason of the successor employer provisions the employer of the employees in the bargaining unit on the certification application date, the effect of its collective agreement with CLAC and the challenges to the validity of that collective agreement raised by CUPSG must be considered. Similarly, in the context of the present certification application, the Board could not, in our view, address the intermingling concerns raised by

Meadowvale. In our view, there may also be an issue as to whether the Board has the jurisdiction to direct the taking of such a two-way representation vote in the context of this certification application. In addition, it must be recalled that employees at the Condominium location have only been given notice of CUPSG's certification application. In the face of that notice, it would be surprising indeed if they were now asked instead to choose between two competing unions.

15. In all of the circumstances, the Board has determined that it should not consider this certification application further until a successor employer application pursuant to section 64 of the Act is made by either CUPSG, CLAC, Meadowvale or any other interested person. Through the filing of an application under section 64 of the Act, not only will notice be given to all employees affected by that application and the certification application, but the Board can then address the various issues and disputes raised as a result of the circumstances and can deal with these matters from a perspective that makes labour relations sense.

16. This panel is not seized with this matter.

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**3814-92-JD Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America, Local Union 1036, Applicants v. Nicholls Radtke Limited, United Brotherhood of Carpenters and Joiners of America, Local 446, Responding Parties**

**Construction Industry - Jurisdictional Complaint - Labourers' union and Carpenters' union disputing assignment of work consisting of releasing, removal and dismantling of formwork built in connection with power plant foundation walls, heat recovery steam generator foundation piers, various machine base foundations, turbine bases and other piers - Board not finding trade agreement relied on by Labourers' to be helpful in deciding dispute - Factors of collective bargaining relationships, skill and ability, and economy and efficiency not clearly favouring either trade - Work in dispute assigned to Carpenters' union**

**BEFORE:** *S. Liang*, Vice-Chair, and Board Members *W. N. Fraser* and *J. Redshaw*.

**APPEARANCES:** *L. A. Richmond* and *W. Suppa* for Labourers, Local 1036; *Denis Flynn* for *Nicholls-Radtke Limited* and *David McKee* and *Gil Scott* for Carpenters, Local 446.

**DECISION OF THE BOARD;** December 10, 1993

1. This is a complaint concerning work assignment filed pursuant to the provisions of section 93 of the *Labour Relations Act*. This complaint arose out of work performed by Nicholls Radtke Limited ("the employer" or "the company") at the Lake Superior Power Co-generation project in Sault Ste. Marie during November and December of 1992 and January and February of 1993. The work in dispute was assigned by the employer to members of the Labourers International Union of North America, Local 1036 ("the Labourers"). This assignment of work resulted in a grievance by the United Brotherhood of Carpenters and Joiners of America, Local 446 ("the Carpenters"), which was adjourned on the agreement of the parties in order that the jurisdiction dispute be determined.

2. The Board held a consultation with the parties on October 7 and November 25, 1993,

where this panel heard the representations of the parties with respect to the dispute and with respect to the documents and materials filed by the parties in this matter.

3. The work in dispute consists of the releasing, removal and dismantling of formwork built in connection with power plant foundation walls, heat recovery steam generator foundation piers, various machine base foundations, turbine bases, and other piers. It includes the initial releasing and removal of the formwork from the concrete face, and the removal of strongbacks and walers necessary for the dismantling and removal of the formwork from the work area. Because the work in dispute occurred over a number of days, and for varying lengths of time, there is some factual dispute about the details of the work on some of these days. We do not need to determine these factual disputes for the purposes of our findings in this jurisdiction dispute. The nature of the work in dispute was clear enough that the parties had no trouble taking positions and making representations in support of their positions.

4. It is fair to say that the dispute crystallized around the issue of which trade should be entitled to perform the stripping of formwork which was not to be re-used intact or essentially intact for further forming on the same project, but where the forming materials will be re-used to build further formwork. With respect to formwork, such as panel forming, which is to be re-used in essentially the same configuration, the parties do not dispute the Carpenters' entitlement to the stripping of this formwork (although at one point, the Labourers also claimed jurisdiction over the removal of the strongbacks and walers once the forming was taken off the concrete). With respect to formwork which is not to be re-used essentially intact for the same project, the Labourers claim entitlement to all the work required for its stripping, and the Carpenters claim entitlement to all such work where the materials are to be re-used for formwork, whether or not on this project.

5. There is no dispute that after the formwork has been released and dismantled, the Labourers have jurisdiction over its cleaning, oiling and carrying.

6. It appears that on this project, where the formwork in dispute was not re-used essentially intact, most of the materials have nevertheless been cleaned and stored, since it consists of special plywood and lumber produced for forming purposes.

7. The Labourers rely heavily on a trade agreement signed in 1949 between international representatives of the two unions. In 1964, this agreement was adopted in writing by local representatives of the Carpenters and Labourers, for the District of Algoma.

8. We do not find this trade agreement to be helpful in deciding this dispute. In *Fraser-Brace Engineering Company, Limited*, [1969] OLRB Rep. Jan. 1087 the Board heard extensive evidence with respect to this agreement, concluding that,

....[d]espite the volume of the testimony, however, little light was shed on the extent of the Carpenters jurisdiction in the stripping of forms contemplated by the October 3rd, 1949 memorandum on concrete forms. The testimony primarily served to underscore the obtuseness of the language of the document on its face. [para.20]

9. The Board also stated that "if there ever was a genuine common understanding as to the division of jurisdiction envisaged by the 1949 memorandum between the Labourers and Carpenters that understanding ceased to exist in less than two years." Finally, the Board stated:

....In summary, paragraph 1 of the October 3, 1949 memorandum on concrete forms does not draw a clearly defined line of demarcation as to the jurisdiction of the Labourers and Carpenters unions over the stripping of forms. Rather, the document bears ambiguities on its face which have been the source of ever increasing jurisdictional discord between the two unions almost since its inception. [para.29]

10. In light of the comments of the Board above, we are not inclined to rely on this agreement unless the evidence clearly establishes, with respect to this local area, a common understanding between the trades as to the meaning of the agreement. We find such evidence lacking in the case before us.

11. To the extent there is evidence of the employer's prior preferences with respect to similar work, it favours the Carpenters. In May of 1989, the company assigned similar work to members of the Carpenters on a project at Algoma Steel. This assignment became the subject of a jurisdiction dispute which was eventually withdrawn, without prejudice. Since the withdrawal was made without prejudice, this panel does not make any findings against any party because of the withdrawal. However, there is no reason why the work in dispute cannot be relied upon as an example of employer preference. Further, all parties acknowledge that similar work was assigned by the employer on this very project to members of the Carpenters. As well, although both unions claimed to have support for their positions from the original written assignments on this project (and both trades claim they have no disagreement with that original assignment), the language used by the employer favours the Carpenters, insofar as the assignments are based on reusable and non re-usable *materials*, as opposed to *formwork*.

12. Turning to the area practice, we find some lack of detail in the documents submitted. We rely only on what is specific enough that it refers to the work in dispute, or from which we can draw reasonable inferences. Taking this into account, it appears that contractors in the area have performed the work predominantly in one of two ways: with a crew of Carpenters, or with a crew of Carpenters with Labourers assisting in the dismantling.

13. We do not find the factors of collective bargaining relationships, skill and ability, and economy and efficiency to favour either trade clearly.

14. In the circumstances of this case, having regard in particular to the past practice of this employer, the wording of the original written assignment and the practice of other contractors in the area, we find that the assignment of the work in dispute on specified dates to members of the Labourers was wrong. Although it appears that in other circumstances the two trades have been able to work together on a composite crew on the dismantling of the formwork once it has been removed from the concrete, we do not think that ordering this option will promote predictability and industrial peace in the circumstances of this case. Given the obvious history of problems between the two trades on this site in arriving at a line of demarcation with respect to the stripping of formwork, we find it necessary to draw such a line ourselves. Therefore, with respect to the stripping of formwork where either the formwork is to be re-used essentially intact or the materials are intended to be re-used for forming purposes, we find that the Carpenters ought to be assigned the releasing and removal of hardware, the removal of the formwork from the concrete face, and the dismantling of the formwork for purposes of transporting away from the work area.

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**2454-93-R** Labourers' International Union of North America, Local 1059, Applicant v. **Ogden Allied Building Services Inc.**, Responding Party

**Bargaining Rights - Bargaining Unit - Certification - Cleaning contractor operating at single location within municipality - Union proposing municipal unit, rather than site-specific unit as proposed by employer - Whether section 64.2 of the Act should lead Board to change its practice in respect of bargaining unit descriptions - Board finding union's proposed unit appropriate - Certificate issuing**

**BEFORE:** *Russell G. Goodfellow*, Vice-Chair.

**APPEARANCES:** *John Moszynski* and *Jim McKinnon* for the applicant; *Lorenzo Lisi* and *Nick Paulozza* for the responding party.

**DECISION OF THE BOARD;** December 16, 1993

1. This is an application for certification.
2. The Board finds that the applicant is a trade union within the meaning of section 1(1) of the *Labour Relations Act*.
3. The issue in this case is whether the applicant should be certified to represent a unit of the respondent's employees described by reference to the "City of London" or to the specific street address where the respondent currently performs services. The applicant is seeking the former, the respondent requests the latter.
4. At the outset of the hearing, the Board asked the respondent why the Board ought to depart from its normal practice of certifying by reference to the municipality where the employer has operations at only one location in the municipality, and directed the respondent's attention to the Board's recent decision in *Burns International Security Services Limited*, [1993] OLRB Rep. June 480. The respondent replied that building services, unlike security services, may support an exception to the Board's practice and that it was not satisfied that the *Burns* case adequately addressed the arguments it wished to make concerning section 64.2 of the *Act*. The respondent also suggested that it was unclear from the *Burns* decision whether the employer had been seeking a site specific certificate or one described by reference not just to the site but to the particular client serviced at the site.
5. On that basis, the Board determined that it would hear the parties' submissions on the following facts agreed upon at the hearing.

**I**

6. The employer provides cleaning and maintenance services to building owners and operators. Its cleaning activities are of two types, hard and soft. Hard cleaning involves operating machinery such as a buffing machine. Soft cleaning involves, for example, collecting garbage, dusting, and washroom maintenance. Hard cleaning tends to require more full-time people than soft cleaning.
7. Maintenance work includes everything arising from the operation of the contract on the property, such as the operation and repair of boilers or air exchange systems in the building. Maintenance work tends to be performed in the day time and may require the services of a fourth class

engineer. It may also involve more day to day interaction with the building manager than cleaning services.

8. The employer acquires its contracts by tender on a site specific basis. The type and extent of services provided may vary from site to site. Under the present contract at the Royal Bank Building in London, the employer provides cleaning services in the evenings from Monday to Friday. The employer has no other contracts at present in the city of London.

9. In cities where the employer has more than one contract, there is typically little interdependence between sites. Exchanges of personnel may be limited to emergencies. Depending upon the size of the contract, there may or may not be an on-site manager. Ultimately, all sites report to a central administration in Toronto. At times, management of the company may come to the various sites to deal with common problems or issues. Although separate payroll records are kept for each site, all payrolls are administered centrally at head office.

10. Industry practice on the geographic scope of the bargaining unit is variable. The employer offered a number of examples of site specific certificates in the city of London, all of which were the product of agreement rather than litigation. The applicant provided examples of municipal-wide collective agreements covering between two and twenty-five sites. In one such agreement, seniority is site specific but recall rights are city-wide.

## II

11. The employer submits that its evidence with respect to industry practice does two things. First, it should relieve any concern the Board may have about any "prejudice" to the union flowing from a site specific certificate. Second, the examples of site specific certificates illustrate that there is a "different type of world" for cleaning services that municipal-wide certificates do not reflect.

12. The employer also submits that the policy concerns giving rise to the Board's preference for municipal-wide certificates have been alleviated in the building services industry by section 64.2 of the *Act*, which states in part:

64.2(1) This section applies with respect to services provided directly or indirectly by or to a building owner or manager that are related to servicing the premises, including building cleaning services, food services and security services.

(2) This section does not apply with respect to the following services:

1. Construction.
2. Maintenance other than maintenance activities related to cleaning the premises.
3. The production of goods other than goods related to the provision of food services at the premises for consumption on the premises.

(3) For the purposes of section 64, the sale of a business is deemed to have occurred,

- (a) if employees perform services at premises that are their principal place of work;
- (b) if their employer ceases, in whole or in part, to provide the services at those premises; and
- (c) if substantially similar services are subsequently provided at the premises under the direction of another employer.

(4) For the purposes of section 64, the employer referred to in clause (3)(b) is considered to be the predecessor employer and the employer referred to in clause (3)(c) is considered to be the successor employer.

13. The employer submits that section 64.2 overcomes the concern that a site specific certificate would permit an employer to move its operations "across the street" at the cost of a trade union's bargaining rights. According to the employer, the union's bargaining rights are now protected no matter what the employer might do. Any successor to an Ogden contract would inherit the union's bargaining rights and collective agreement by operation of law. On that basis, the employer submits, municipal-wide certificates are no longer necessary in this industry and, in this case, the Board should place greater weight on the evidence that employees at a future Ogden site may not share a community of interest with those at the existing site.

### III

14. The Board is not persuaded by the employer's arguments. Taking each in turn, it is not at all clear that section 64.2 was intended to address, or has the effect of addressing, all of the concerns underlying the Board's preference for municipal-wide certificates.

15. As pointed out by the employer, the concerns that gave rise to municipal-wide certificates in circumstances where the employer operates at only one location in the municipality were outlined in *T.R.S. Food Services Limited*, [1980] OLRB Rep. Apr. 542 at 543:

4. Where an employer has only one location within a municipality, the Board's consistent practice, apart from the construction industry, has been to describe the geographic scope of the bargaining unit by reference to the municipality rather than the respondent's particular location. This practice results from a balancing of two competing interests: the individual's interest preserved by section 3 of the Act to be free to join a trade union of his own choice on the one hand, and, on the other, the concern of the Board as well as the union and employees involved in any particular case that sufficient stability adhere to the bargaining rights conferred ....

5. While limiting a bargaining unit to the respondent's particular location would give considerable latitude to an individual's freedom to join a trade union of his own choice, it could, at the same time, jeopardize the stability of the bargaining rights conferred upon the union. If an employer moves the location of its operation in a situation where the bargaining unit has been defined by reference to the employer's street address, the union's bargaining rights may be extinguished by the move. The Board's general policy of describing the geographic scope of a bargaining unit by reference to the municipality in which the employer's operation is situated instead of the particular location inhibits bargaining rights from being disturbed in this manner.

16. In *T.R.S.* the Board was asked to depart from its normal municipal-wide practice in favour of a bargaining unit defined by reference to the particular client serviced in the municipality. The employer argued that "because such a description would ensure that bargaining rights would follow the client anywhere it might move in St. Catharines, the stability of the bargaining rights [was] not at risk". The Board rejected this argument on the following grounds:

8. The Board is of the view, however, that notwithstanding the absence of the street address, the respondent's proposed geographic description would unnecessarily strain the stability of the bargaining rights. *The permanent relationship of the employees involved in this application is with the respondent, T.R.S. Food Services Limited, and not with the respondent's client, General Motors.* While some clients in the food service industry may develop a relatively permanent relationship with the particular company engaged in the food service business, neither the length of the contract for food service nor its continual renewal may be taken for granted. To tie the continuation of the applicant's bargaining rights to the client serviced by the respondent would mean that the bargaining rights would be placed in a position of complete dependence on the continuation of the food service contract which existed between the employer and the particular client being serviced at the time of the application for certification. Given the fluctuations of the

market place and the competition for such contracts, the Board concludes, on balance, that where the employer has but one location in the municipality, the geographic scope of the bargaining unit should be defined by reference to the municipality in which the respondent is located. We note that in circumstances where an employer has two or more locations in a municipality, additional considerations relating to the actual community of interest shared between the particular locations may become relevant.

(emphasis added)

17. The highlighted passage in the Board's reasoning reveals at least one flaw in the employer's argument in this case: the permanent relationship of a contractor's employees is not with the particular client serviced, whether or not at a specific site or even within a municipality, but with the contractor itself. By selecting a trade union to bargain on their behalf, employees are expressing a preference for a particular kind of relationship with *their employer*. It is a preference which the Board, in the exercise of its discretion under various sections of the *Act*, seeks to protect from a variety of corporate and business changes, including changes in the geographic location of the employer's operations. The assignment of municipal-wide rights to bargain on behalf of employees is intended to ensure that a relocation of operations will not frustrate this expression of employee wishes. It recognizes, as the Board noted in *T.R.S.*, a relationship of permanence with the certified employer, not with the successor or with the particular client serviced.

18. While clearly intended to protect certain kinds of employee and trade union interests from changes inherent in the building services industry, section 64.2 approaches the problem from a somewhat different and more limited angle. In those industries that depend upon tendering to acquire and keep their business and where the services are carried out at the premises of the customer, section 64.2 is designed to overcome the disruption to the employees' preference for a bargaining agent and, to some extent, their attachment to a particular workplace, by preserving aspects of the *status quo* in the event the contract is lost. The new and successful tenderer will be bound to recognize the trade union's bargaining rights at the site and to apply the contractually agreed terms and conditions of employment.

19. By addressing one particular and recurring problem in this industry, however, section 64.2 ought not to be taken as answering all of the concerns that municipal-wide certificates are intended to address. For example, section 64.2 would seem to do nothing for employees who would prefer to continue their relationship with their employer under the established terms and conditions of employment should their employer be replaced at the first site but acquire another contract next door. Under the arrangement proposed by the employer in this case, the employees' preference for a collective bargaining relationship with their employer would be nullified. Employees who wished to remain with their employer at the adjacent location would be forced to surrender the benefits of union representation and any collective agreement. Alternatively, if the new and successful contractor is also unionized, employees may find themselves not only in the employ of a different company but, potentially, represented by a different trade union under different terms and conditions of employment. The approach advocated by the employer ignores this aspect of municipal-wide certificates.

20. Section 64.2 is of relatively recent origin. The extent of its protections has yet to be determined or its limitations established. At this stage, and in light of the foregoing, the Board is not disposed to find that it answers all of the concerns that municipal-wide certificates were intended to address.

21. As to the employer's second point, the Board is satisfied that any future Ogden employees would share a sufficient community of interest with the respondent's existing employees to bargain together in a viable way without causing serious labour relations problems. As the Board

noted in the *Hospital for Sick Children*, [1985] OLRB Rep. Feb. 266, collective bargaining has proved itself capable of accommodating a variety of interests within the framework of a single collective agreement. There is nothing in the employer's evidence with respect to the different types or times of work performed at its sites in other cities, or as to the infrequency of interchange of personnel, that could not be addressed in a single collective agreement.

22. Accordingly, the Board finds that all employees of Ogden Allied Building Services Inc. employed in the City of London, save and except non-working forepersons and persons above the rank of non-working forepersons, constitute a unit of employees of the responding party appropriate for collective bargaining.

23. In accordance with the Rules of Procedure, the employer has filed a list of employees in the bargaining unit together with sample signatures for the employees on that list. In support of its application for certification, the union has filed documentary evidence of membership in the form of cards. The cards are signed by each employee concerned and indicate a date within the six-month period immediately preceding the application date. The membership evidence is supported by a duly completed Declaration Verifying Membership Evidence.

24. The Board is satisfied on the basis of all of the evidence before it that more than fifty-five per cent of the employees of the responding party in the bargaining unit on October 13, 1993, the certification application date, had applied to become members of the applicant on or before that date.

25. A certificate will issue to the applicant.

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**2844-93-M; 2869-93-M** Retail, Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America, Locals 414, 422, 440, 448, 461, 483, 488, 1000 and 1688, Applicants, v. Retail, Wholesale and Department Store Union District Council of the United Food and Commercial Workers Union, et al; The Great Atlantic & Pacific (stores) Company of Canada Ltd.; Able Atlantic Taxi; Associated Toronto Taxi-cab Co-Operative Ltd.; Atlantic Packaging Products Ltd.; The Great Atlantic & Pacific Company of Canada Ltd.; Sav-A-Centre - division of The Great Atlantic & Pacific Company of Canada; Autostock Distribution Division of T.C.C. International Inc.; Beaver Foods Ltd.; Beaver Lumber Company Ltd.; Beaver Lumber Company (Parkdale Store); CAA Ottawa; Canada Catering Co. Ltd.; Canteen of Canada Ltd.; Can Can Food & Vending Services Ltd. (Parnell); Can Can Food & Vending Services (Essex); Central Chevrolet Oldsmobile (London) Inc.; 947465 Ontario Ltd. c.o.b. as Checkers Limosine & Airport Service; Colonial Furniture (Ottawa) Ltd.; 978653 Ontario Inc. c.o.b. as The Connection Group; Cornwall Warehousing Limited; Dougherty's Meats Limited; Dynamic Distributors, A Division of Apple Auto Glass Limited; 629434 Ontario Ltd. (East Huron Poultry Ltd.); Educator Supplies & Scholars Choice; Factory Carpet - Division of Colorcarpet Inc.; G.B. Catering Ltd.; Grand & Toy Ltd.; Hershey Canada Inc. Hully Gully (London) Ltd.; IGA Glebe; Jarvis Design

& Display; J.F. Eastwood Ltd.; K-W Food Services; Laidlaw Carriers Inc.; Shirley Leishman Books Ltd.; Loeb Alfred; 917921 Ontario Inc. c.o.b. as Loeb Baywood; 914089 Ontario Inc. operating under Loeb I.G.A. Beaverbrook; 836541 Ontario Ltd. c.o.b. as Loeb Carleton Place; Capital Supermarkets (1988) Ltd.; c.o.b. Loeb IGA Convent Glen; 652605 Ontario Inc. c.o.b. as Loeb Lincoln Heights; Loeb IGA Nortown; Loeb IGA Wallaceburg; 895657 South Mitchell Holdings Ltd.; c.o.b. as Loeb Club Plus Woodstock; L.O.F. Glass of Canada Limited; Marsh Food Services; Mr. Grocer Franchise Stores; Murphy Distributing Ltd.; National Federation of Nurses' Unions; National Grocers Co. Ltd.; Nivel Inc.; No Frills Franchise Stores; Nordik Windows Inc.; Nutritional Management Services (1991) Limited; Ontario Motor League Elgin-Norfolk Club and Ontario Motor League World Wide Travel Agency (St. Thomas) Limited; Patton's Place Ltd.; Pharma Plus Drugmarts Ltd.; Robert Chabot Enterprises Limited c.o.b. Centennial Construction Equipment Rentals; Robert Yan Drugs Ltd.; Royal Doulton Canada Limited; Katalin Lanczi Pharmacy Ltd. c.o.b. as Shoppers Drug Mart; Sifton Properties Limited; Stuart House Products; S & R Department Store (1976) Ltd.; Trafalgar I.G.A.; Somerset Specialities Ltd.; Trans-Canada Freezers Limited; The UCS Group Division of IMASCO Retail Inc.; United Co-operatives of Ontario; Vanfax Corporation (LOF Glass of Canada Ltd.); Versa Services Ltd.; VS Services Ltd.; Walfoods Limited; 598537 Ontario Inc. c.o.b. as Warner Pro Hardware; Wayne Pitman Ford Sales Inc.; Willett Foods Inc.; F.W. Woolworth Co. Ltd.; World's Biggest Book Store, a division of Coles Book Stores Limited; The Brick Warehouse Corporation; The Brick Warehouse Corporation; 374761 Ontario Limited c.o.b. under the firm name and style of Brotherhood Mens & Boys Department Store; Freed Storage Limited; Sears Canada Inc.; Simpsons (The Bay Brampton); Simpsons (The Bay Cedarbrae); **The Bay - Kingston**; The Hudson's Bay Company, Kitchener; The Bay (Windsor); Simpsons Ltd. (The Bay - Sherway Gardens); Simpsons (The Bay - Warden Woods); Seligman and Latz of Polo Park Limited; Zellers Inc. (Metropolitan Toronto and Brampton Distribution Centres); 806966 Ontario Inc. as A-1 Taxi; 727825 Ontario Ltd. c.o.b. as Eastway Taxi, Julian Taxi Cab Ltd.; ABC Taxi (Brockville) Ltd. & Safedrive Inc. c.o.b. City Cab; Associated Toronto Taxi-Cab Limited; Blue Line Taxi Co. Limited; Call-A-Cab Ltd.; 366838 Ontario Limited c.o.b. as City Wide Taxi; Diamond Taxicab Association (Toronto) Limited; Hamilton Yellow Cab Company Limited; Metro Cab Company Limited; DJ's Nepean Taxi Company Limited and the Owners Group; Union Taxi; Westway Taxi Nepean Ltd.; Bluecrest (Div. of Ault Foods); Royal Oak Dairy (A Division of Ault Foods); Abbot Laboratories Limited; Ault Foods Limited; Baskin-Robbins, A Division of Silcorp Limited; Beatrice Foods (Brampton Div.); Beatrice Foods Inc. Toronto Div.; Beatrice Foods Inc., Simcoe Division; Beatrice Foods Inc., Brookside Dairy Division; Beatrice Foods Inc., Maple Lane Dairy Division; Belarus Equipment of Canada Ltd.; Brown Fine Foods; Everfresh Beverages Inc.; Gesco Warehousing & Distributing Company; Mossman's Appliance Parts Ltd.; Northside Dairy (Di-

vision of Ault Foods); Restauroics Service; Rich Products of Canada Ltd.; Silcorp Ltd.; Seibe North Canada Ltd.; Sodexho Ltd.; Spalding Canada - a Division of Spalding & Evenflo Canada Inc.; TCC Bottling Ltd. (Renfrew) c.o.b. as Coca Cola Bottling; T.R.S. Food Services Ltd.; Uniondale Cheese Factory Inc.; Winchester Cheese, Winchester; Hydon Holdings Limited c.o.b. Hy's Steak House; The Kitchener-Waterloo Labour Association Incorporated; The Millcroft Inn Limited; National Automobile, Aerospace and Agricultural Implement Workers Union of Canada, CAW-Canada Local 27; Local 1520 C.A.W. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada, (CAW-Canada); Rendez Vous Tavern; Sirch Holdings Inc. c.o.b. as The Ridout Tavern Complex; Wendy's Restaurants of Canada Inc. Store #356; 696254 Ontario Limited c.o.b. as Notes - Alfies; Canada Bread, Division of Corporation Food Limited (Oshawa, Hamilton and St. Catharines branches); Commercial Bakeries Corp.; Corporate Foods Limited, Dempster's Bread in the City of Markham; Corporate Foods Limited; Culinar Foods Inc.; Robinson Cone (a division of Dover Industries); Golden Mill Bakery Limited; Hostess Food Products Limited, Cambridge; Hostess Frito Lay Company, London; Humpty Dumpty Foods Limited; Humpty Dumpty Foods Limited; Kitchens of Sara Lee, Canada, a division of Sara Lee Corporation of Canada Limited; Weston Bakeries Limited, Peterborough; Weston Bakeries Limited, Kitchener; Weston Bakeries Limited, London; Weston Bakeries Limited, Orillia; Weston Bakeries Limited, Walkerton; Best Foods Canada Inc.; Casco Inc.; Nestle Canada Inc. Foods Division, Responding Parties v. Minister of Labour, Applicant/Intervenor v. Ontario Retail Employees Dental Benefit Trust Fund, Intervenor v. Group of Employees, Objectors; RWDSU District Council of the United Food & Commercial Workers International Union and its Locals 414, 440 and 1000, Applicants v. Retail Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America and its Locals 414, 440, 1000 and 1688; Murphy Distributing Ltd. and/or Murphy Distributing (Sarnia) Ltd.; Everfresh Beverages Inc.; Marsh Food Services; 947465 Ontario Limited c.o.b. as Checker Limousine and Airport Service; The Hudson's Bay Company - Kitchener; The Hudson's Bay Company - Windsor; K-W Food Services; Willett Foods Inc., Responding Parties

**Bargaining Rights - Conciliation - Interim Relief - Reference - Remedies - Union Successor Status - Various locals of RWDSU rejecting proposed merger with UFCW, disaffiliating from RWDSU, amalgamating with each other to form RWDSU/Canada, and merging with with USWA to form Canadian Service Sector Division of USWA - Board in A & P case declaring USWA to have acquired rights, privileges and duties of its predecessors - USWA seeking interim order in connection with further 200 pending union successor rights applications - Board declaring USWA to be interim exclusive bargaining agent for employees in bargaining units affected by pending successor rights applications - Board advising Minister of Labour that he may treat USWA as exclusive bargaining agent in respect of affected bargaining units, and may appoint arbitrators and conciliation officers as requested by USWA notwithstanding assertions made by any other trade union - Board dismissing cross-application for interim relief made by UFCW**

**BEFORE:** *R. O. MacDowell*, Alternate Chair, and Board Members *G. O. Shamanski* and *H. Peacock*.

**APPEARANCES:** *James Hayes, Brian Shell, Blaine Donais, Robert McKay* for Retail, Wholesale Canada, Canadian Service Sector Division of the USWA; *A. M. Minsky, B. S. Fishbein, Robin McArthur* and *Edward Jenner* for RWDSU District Council of the UFCW; *Wallace Kenny, Clifford J. Hart, R. W. Kitchen, R. Kelly, Carl Peterson, A. D. G. Purdy, Chris Lloyd, Martin K. Denyes, Gord F. Luborsky, Roberta Johnson, Simon Mortimer* and *W. J. Hayter* for various employers; *Donald Chiasson, Jerry Kovacs* and *Grainne McGrath* for the Minister of Labour; *Cynthia Watson* and *Wayne Manley* for Ontario Retail Employees Dental Benefit Trust Fund; *Douglas J. Wray, Harold F. Caley* and *Denis Ellickson* for the objecting employees.

**DECISION OF THE BOARD;** December 17, 1993

**Introduction: What this case is about**

1. This is an application for interim relief, filed in connection with some 200 union “successor rights” applications, that are currently pending before the Board. As things now stand, those successor rights applications may have to be litigated, one by one. The hearings may take months. The applicant seeks an interim Order prescribing the parties’ rights in the meantime.
  2. In each of these 200 successor rights applications, the applicant, “Retail, Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America and its Local 414, 440, 1000 and 1688” [essentially the “Steelworkers”] claims that it has acquired the rights, privileges and duties of various Ontario “locals” of the Retail, Wholesale and Department Store Union, AFL-CIO-CLC. The applicant claims that it now stands in the shoes of those Ontario RWDSU locals for collective bargaining purposes.
  3. The basis for this assertion is somewhat complex, but the claim itself is relatively easy to describe.
  4. The applicant “Steelworkers” say that the RWDSU organization in Southern Ontario, with its officers, employees and infrastructure has disengaged from its American Parent, and has merged with the United Steelworkers of America. The applicant says that most *Canadian* locals of the RWDSU in Ontario and elsewhere have followed the same route. These Ontario locals chose not to merge with the United Food and Commercial Workers Union (“UFCW”) which was the desire of the *American* RWDSU locals, and was the goal of the American Parent Union. Instead, most Canadian locals found a home in the Steelworkers - which, of course, is also an international union with substantial membership in Canada.
  5. The American Parent union, now merged with the UFCW, attacks the way in which the purported merger with the Steelworkers has occurred. The American Parent union claims that it was the true holder of the bargaining rights for these workers in Southern Ontario, not the local unions situated in Ontario. The American Parent and the UFCW argue that the UFCW has now acquired those rights.
- \* \* \*
6. The application for interim relief is made pursuant to section 92.1 of the Act. The underlying successor rights applications are made pursuant to section 63 of the Act. Those sections read as follows:

**[Successor Rights]**

**63.-** (1) Where a trade union claims that by reason of a merger or amalgamation or a transfer of jurisdiction it is the successor of a trade union that at the time of the merger, amalgamation or transfer of jurisdiction was the bargaining agent of a unit of employees of an employer and any question arises in respect of its rights to act as the successor, the Board, in any proceeding before it or on the application of any person or trade union concerned, may declare that the successor has or has not, as the case may be, acquired the rights, privileges and duties under this Act of its predecessor, or the Board may dismiss the application.

(2) Before issuing a declaration under subsection (1), the Board may make such inquiry, require the production of such evidence or hold such representation votes as it considers appropriate.

(3) Where the Board makes an affirmative declaration under subsection (1), the successor shall for the purposes of this Act be conclusively presumed to have acquired the rights, privileges and duties of its predecessor, whether under a collective agreement or otherwise, and the employer, the successor and the employees concerned shall recognize such status in all respects.

\* \* \*

**[Interim Relief]**

**92.1-**(1) On application in a pending or intended proceeding, the Board may grant such interim orders, including interim relief, as it considers appropriate on such terms as the Board considers appropriate.

(2) A party to an interim order may file it, excluding the reasons, in the prescribed form in the Ontario Court (General Division) and it shall be entered in the same way as an order of that court and is enforceable as such.

7. The Steelworkers seeks an *interim* Order (among other things) declaring it to be the "successor union" and exclusive bargaining agent in the various collective bargaining relationships to be considered in each of the 200 or so successor rights applications.

8. The RWDSU District Council of the United Food and Commercial Workers International Union and its Locals 414, 440 and 1000 (the American Parent now merged with the UFCW) resists that interim or final result. So does a group of employees, who work for employers in Southern Ontario and once were members of one or other of the Ontario locals of the RWDSU International. We cannot say how numerous these employee objectors are.

9. The employers take no position as between the union rivals. The employers do urge the Board to clarify which union, if any, the employers must deal with on an interim basis, until these successor rights applications are disposed of.

10. The Minister of Labour has filed a companion application under section 109 of the Act. That section reads as follows:

**109.-**(1) The Minister may refer to the Board any question which in his or her opinion relates to the exercise of his or her powers under this Act and the Board shall report its decision on the question.

(2) If the Minister refers to the Board a question involving the applicability of section 63 (declaration of successor union), 64 (sale of a business) 64.1 (federal-to-provincial sale) or 64.2 (services provided under contract), the Board has the powers it would have if an interested party had applied to the Board for such a determination and may give such directions as to the conduct of its proceedings as it considers advisable.

11. The Minister takes no position as between the rival unions' claim to bargaining rights.

However, the Minister requests the Board's advice as to how he should exercise his statutory authority in the interim, because (as in the case of the employers), each rival union is demanding that the Minister deal with it, to the exclusion of the other.

12. Under the *Labour Relations Act*, the Minister has a variety of obligations that are triggered at the request of a union bargaining agent. We will have more to say about that later. The problem for the Minister is that each union claims exclusive entitlement to make that request.

13. Finally, in response to the request for interim relief made by the Steelworkers, the UFCW has filed its own request for more limited interim relief, in respect of certain collective bargaining relationships and certain partisans of the UFCW's position in Ontario.

14. In summary, the labour relations reality is that there is a massive dispute between, on the one hand, the UFCW, the American RWDSU Parent now merged with the UFCW, and their various international officers; and on the other hand, the Steelworkers, and the officers and representatives of various Ontario local unions of the RWDSU. We put the position this way because virtually all of the officers, officials and representatives of the Ontario locals have declared themselves against the merger with the UFCW and in favour of the relationship with the Steelworkers. Thus, quite apart from the legal issues which the Board is called upon to determine, we have a mammoth dispute between unions in which each union seeks to use whatever legal or political weapons are available to obtain its objective - which is the representation of employees who were members of the Southern Ontario locals of the RWDSU.

15. There are important legal issues at the heart of the litigation before the Board. But that litigation, in itself, is part of a broader labour relations dispute within the "House of Labour". Indeed, as the Board observed at the hearing, the exercise in which we are now engaged has all the flavour of a child custody battle, with all of the acrimony so often associated with that unhappy area of family law.

16. This is not an exercise in which the Board is willingly engaged. But we were told by the main union protagonists that all efforts to resolve their dispute have failed. We were told by the employers that some Board intervention is imperative because they are "caught in the middle". We were told by the Minister of Labour that he needs an answer to his questions about his authority, and would prefer that, if possible, the questions are answered once, rather than in some piecemeal fashion.

\* \* \*

17. The parties have all filed voluminous material in respect of these various applications, including declarations from a number of individuals setting out "the facts" as they saw them from their admittedly partisan perspective.

18. On November 23 and 24, 1993 the Board held a hearing to receive the parties' representations on how we should deal with these interim applications, and the appropriateness of making an interim order. Quite a number of lawyers appeared to make submissions. Counsel for the Minister also appeared to outline the situation from his perspective.

19. We have taken these representations into account in deciding what interim Order may be appropriate.

**Who the parties are and how they will be described in this decision**

20. As we have already mentioned, this case is about inter-union rivalry, and its effects on the collective bargaining relationships of dozens of employers, and thousands of employees in Southern Ontario. Those relationships are currently plagued by uncertainty and mired in litigation, of which this application is a part. But part of the confusion in this case arises from the way in which the parties name themselves.

21. Since each rival union organization claims to be the “true successor” of the Retail, Wholesale and Department Store Union (or parts of it) in Ontario, each competitor has incorporated the RWDSU name into its own. Presumably the Steelworkers and the UFCW both find it advantageous, tactically, to use the names of the RWDSU Ontario locals that they claim to represent. Thus, we have: “Retail, Wholesale Canada, Canadian Service Sector *Division of the United Steelworkers of America*, Locals 414, 422, 440, 448, 461, 483, 488, 1000 and 1688 [emphasis added] - which is to say “*the Steelworkers*”; and we have: “RWDSU District Council of the *United Food and Commercial Workers International Union* and its Locals 414, 440 and 1000” [emphasis added] (and perhaps others) - which is to say “*the UFCW*”. The result is a little confusing.

22. However, in order to make this decision easier to read, we will usually refer to the parties in abbreviated form. Since we anticipate that this decision may be read by employees, we think it is important to “keep the players straight”.

23. In this decision, we will refer to the United Food and Commercial Workers International Union as the “UFCW”. The United Steelworkers of America will be referred to simply as “the Steelworkers”. The Retail, Wholesale and Department Store Union, AFL-CIO will be referred to as the RWDSU.

24. Where we wish to refer only to the parent American organization, we will refer to either “RWDSU International” or the “American Parent”.

25. Geographically or functionally defined “local” unions which were once affiliated to the RWDSU International without controversy, will be referred to simply by their local number (e.g., RWDSU Local 414).

26. There are many employers involved in these proceedings. However, their submissions were quite similar, and we will refer to them collectively as “the employers”, unless it is necessary to identify a particular collective bargaining situation.

27. A number of employees also appeared by counsel - although we note, for the record (as we were asked to do) that such counsel was being paid by the UFCW. Accordingly, although this group of employees was separately represented, they were allied in interest to the UFCW party, and made submissions supporting its position. Where necessary, we will refer to the employees as a group, as we have done with the employers. In so doing, we do not suggest or find that this group of employees is representative of, or speaks for, other employees.

28. The Ontario Minister of Labour will be referred to simply as “the Minister”.

29. There have already been four Board decisions involving one or more of the parties now before us: three “interim decisions” dated July 29, 1993, August 12, 1993 [now reported at [1993] OLRB Rep. Aug. 783], and September 2, 1993 [now reported at [1993] OLRB Rep. Sept. 880], as well as a “final” decision under section 63 dated September 23, 1993 [now reported at [1993] OLRB Rep. Sept. 885]. These decisions were made by different panels of the Board, and, for ease

of reference, we will occasionally label them by the presiding Vice-Chair (R. O. MacDowell, Alternate Chair, for the decisions of July 29 and August 12, 1993; Robert Herman, Vice-Chair, for the decision of September 2, 1993; and Judith McCormack, Chair, for the decision of September 23, 1993).

\* \* \*

30. We will begin the main part of this decision with a brief description of the application now before us, and the background leading up to the present proceedings. That description will necessarily be somewhat abbreviated, given the volume of material (particularly the allegations and counter-charges) put before us. However, for purposes of this interim decision, it is sufficient to sketch in the situation in broad strokes.

31. We will then turn to our disposition of this case, and the legal and policy considerations that prompt us to reach that conclusion.

### **Some Background**

32. The Steelworkers, the UFCW, and the RWDSU are all international unions, with headquarters in the United States and a significant number of Canadian members. Each of these unions is sub-divided into "local" unions, which are (or were) subordinate to their "Parent" international body (e.g., RWDSU Local 414). The affairs of the RWDSU, the UFCW, and the Steelworkers are governed by their respective international Constitutions. Local unions have their own by-laws which govern their local affairs.

33. The UFCW and the RWDSU International both represent employees in the service sector, and for the last couple of years there have been ongoing discussions between them about merging the two organizations into a single union. The merger with the UFCW was strongly supported by the RWDSU International (the American Parent) and its American officers. Those officers eventually led the *American* locals into merger with the UFCW.

34. For the most part, the *Canadian* officers and representatives of the RWDSU in Canada did not welcome the merger with the UFCW. On the contrary. These Canadian officers were opposed to the merger with the UFCW. At least, that is the inference to be drawn from their various declarations filed in the proceedings before the Board, and from the fact that virtually all of these officers, officials and Canadian representatives of the union eventually found their way into the Steelworkers' organization, and now support the purported merger with the Steelworkers.

35. We make no comment on the desirability of a merger with either the UFCW or the Steelworkers, or upon the political wrangling between the Canadian and American officers of the RWDSU. We do observe that the merger mechanism ultimately selected by the RWDSU International and the UFCW (i.e., the way the merger between them was to be approved) involved decision-making by *delegates* selected from various parts of the two unions. It did not require a referendum vote of the membership. Delegates were to make the merger decision, not the employee-members of the union.

36. Delegate conventions are fairly common both in the labour movement and elsewhere. That is the way in which many unions conduct their business. It is the way in which the RWDSU International operated in the past, both in the United States and Canada. It is a familiar process: delegates are selected from constituencies and those delegates make policy decisions for the organization.

37. As noted, the mechanism by which the RWDSU International and the UFCW were to merge did not contemplate a membership referendum. The decision was to be made by delegates. The process by which *Canadian* locals of the RWDSU purportedly merged with the Steelworkers did not contemplate a referendum either. That consequence, too, is said to be the result of the voting preference of delegates. Indeed, the Canadian delegate convention convened in Toronto to consider the UFCW merger, not only unanimously rejected that option, but also went on to effect a purported merger with the Steelworkers. Among the issues the Board must decide in the “main applications” is the propriety and effect of this second decision on July 11.

38. The merger arrangements are discussed in some detail in earlier Board decisions, and we will not review those matters here. They are, in any event, the focus of the continuing legal dispute between the parties which we do not here decide, and upon which our comments will be quite limited. It suffices to say that the process envisaged by the American Parent permitted the Canadian locals to affiliate with the UFCW, one by one; and also allowed a group of locals to reject the UFCW merger by a majority vote of the delegates from those locals. But if the merger was rejected, the American Parent required the Canadian locals to disaffiliate *independently* - that is, the Canadian section of the union *not* merging with the UFCW was to decompose into unrelated local fragments.

39. It was the disintegration of the Canadian organization which the Canadian officers opposed, and which they assert was intended to weaken the locals and expose them to UFCW attack and capture. If the locals drifted divergently into independence, it would be difficult to maintain a coherent organization. If they were isolated, put under trusteeship, and deprived of funds by the American Parent, their ability to act would be weakened. So instead of waiting until October 1, 1993 when the deemed disaffiliation and decomposition was to occur, the Canadian officers turned the delegate convention that rejected the UFCW merger into the instrument to keep the locals together, and guide them into the Steelworkers organization. They did not wait until October 1.

40. It is the submission of the UFCW/American Parent, that these steps were blatantly “un-constitutional”, that they were contrary to the UFCW merger arrangements and protocols, and that they did not result in a merger with the Steelworkers.

41. There is no doubt that the Ontario locals did not take the path envisaged by the American Parent. The question, though, is whether the steps they *did* take arguably resulted in a “successorship” under section 63 of the act. The same question arises from the alternative perspective of the UFCW. There is no doubt that the Canadian delegates rejected merger with the UFCW. Did the way in which the delegates repudiated the UFCW and what they did later, actually lead to the UFCW’s acquiring bargaining rights after all? By jumping to the Steelworkers too early (and the UFCW says wrongly), did the local delegates create a situation that actually caused their locals to fall back into the UFCW, along with the American locals? We put it this way because (as we understand it) the UFCW/American Parent are claiming that *they* now have the bargaining rights - in effect, that section 63 applies to this UFCW entity, which has become the true successor union. And, of course, there has been no Board declaration to that effect, nor is the claim based on any referendum, vote, or ratification by the employees affected by the UFCW claim.

42. At the heart of the legal controversy is the propriety and legal effect of what delegates from the Canadian locals purported to do at a convention, in Toronto, on July 10-11. To put it simply: those actions either did, or did not, result in a break-away from the American Parent, and a subsequent merger with the Steelworkers. Associated with this question (as we understand it) are arguments made by the UFCW (and/or the American Parent of RWDSU now merged with the

UFCW) that the merger attempt was not only ineffective, but being ineffective, results in a situation in which the UFCW now has the bargaining rights after all - that is, despite the rejection of the UFCW by the delegates at a meeting called for the purpose of considering the proposed UFCW merger, their actions, and events, actually delivered bargaining rights to the UFCW.

43. From the outset, the Canadian officials of the RWDSU anticipated opposition from the officers of the American Parent who, they say, were intent upon taking the RWDSU in its entirety, into the UFCW. Their fears are recorded in the material filed in these earlier proceedings, and are summarized in both the MacDowell decision of August 12, 1993 and the McCormack decision of September 23, 1993. Whether there was a foundation for their fears, we do not decide. We do note that on July 13, 1993, the Retail, Wholesale and Department Store Union, Canadian Service Sector Division of the United Steelworkers of America, Local 414 (i.e., the former Local 414 of the RWDSU now purportedly merged with the Steelworkers) filed its first successor rights application, together with a companion unfair labour practice complaint, alleging that the American Parent and its officers had contravened the Ontario *Labour Relations Act*.

44. The Board gave these applications File Nos. 1248-93-R and 1346-93-U. It was these files which led to the first successor rights decision finding in the Steelworkers' favour. The decision was issued by the Chair of the Board on September 23, 1993, and will be referred to below as "the *A & P* case".

45. Because the *A & P* case produced a decision "on the merits" after a full hearing between the rival unions, we will consider it in some detail, as well as the two interim decisions which were made in connection with the case.

#### **What the *A & P* case was about - in general**

46. The *A & P* case involved RWDSU Local 414, which, with nine thousand members, is the largest of the RWDSU locals in Ontario. It also involved the *A & P* bargaining unit which encompasses approximately 5,000 employees. The *A & P* unit is the largest bargaining unit administered by Local 414. And, of course, it involved *A & P* which is a very large retail employer in Ontario.

47. Since the *A & P* case involved the largest Ontario local of RWDSU and its largest Ontario bargaining unit, and since the effect of the delegate convention of July 10-11 was central to the disposition of that case, there was every reason to expect that the *A & P* decision would heavily influence (if not be dispositive of) other successor rights applications, involving other employers and bargaining units.

48. The UFCW now says that this was not a "test case". But that is how it was regarded at the time. At the very least, no one would reasonably have anticipated that the events of July 1993 would have to be litigated again and again - perhaps two hundred times.

49. It is important to emphasize that the central issues in this first successor rights proceeding, were the requirements of section 63 of the Act (i.e., a matter of statutory interpretation confined exclusively to the Board) and whether the disaffiliation/merger transaction under review met those requirements. The same issues will have to be addressed in the 200 other successor rights applications involving different employers, local unions and bargaining units. But the main players and many of the main events will be much the same - including the constitutional arrangements between the various unions and the effect of the delegate convention of July 10-11.

50. The meeting on July 10-11 was attended by delegates from Local 414. But it was also

attended by delegates from other Ontario locals. Those delegates were selected according to the criteria established by the American Parent and the UFCW. They were seated on July 10 without challenge by Lenore Miller, the President of the American Parent, who presided that day.

51. On July 10, the delegates voted unanimously to reject the merger with the UFCW - as the formula devised by the American Parent purportedly allowed them to do. These same delegates from Local 422, 440, 448, 461, 483, 488, 1000 and 1688, along with Local 414, reconvened the next day, July 11. Like the day before, they deliberated together, and, acting in concert, reached a decision. This time, though, they purported to create an intermediate organization called "RWDSU Canada", which then was purportedly merged with the Steelworkers.

52. The effect of that decision was central to the *A & P* case, to which we will return in a moment.

### **The First Interim Order**

53. File 1248-93-R was scheduled to come on for hearing before the Board on August 9, 1993. In the meantime, the Board was called upon to make an interim order under section 92.1, in order to inject some stability and certainty into the collective bargaining situation. The Board was asked to preserve the status quo, and the rights of third parties, until the case on the merits was litigated before the Board. Barely three weeks after the July 10-11 meeting, the inter-union rivalry had begun to escalate, as the American Parent/UFCW tried to assert control over Ontario locals, whose officers had deserted to the Steelworkers. The panel on the interim motion (MacDowell, Armstrong, Fraser) later wrote:

32. As part of what is described as the "political manoeuvring" of the applicants [the Steelworkers], it is alleged that a number of the actual *individuals* who serviced the members' needs in the geographic areas represented by the dissenting locals, have quit their employment with the RWDSU and have become employees of the Steelworkers. This leaves the RWDSU International and/or the trustee [imposed by the International to run the affairs of the locals], without sufficient personnel to service the needs of these local members, because a number of the individuals who have historically done so, have gone over to the rival organization(s). To meet this challenge, the RWDSU International proposes to bring in union representatives from Northern Ontario locals who have opted to merge with the UFCW, as well as to "borrow" a number of union representatives currently employed by the UFCW.

33. We are therefore left with a curious situation in which, we are told, the collective bargaining needs of employees in the dissenting locals should be looked after either by a group of individuals familiar with them but now employed by the Steelworkers, or, alternatively, by a group of individuals drawn from other local unions or from the UFCW.

34. The employer takes no position on these competing union claims. The employer points out that it has collective bargaining relationships with several of the protagonists, and wants only to remain neutral. The employer submits that it is now "caught in the middle" between rival unions.

35. The employer submits that while Constitutional niceties and questions of bargaining rights are being debated between the contending unions, the employer should be entitled to carry on business as usual - including its ordinary labour relations activities. The employer submits that it should not have to choose between rival union representatives who appear at its stores claiming to represent the employees, nor should it have to risk its legal neutrality by seeming to defer to the demands of one or other of the competing groups. The employer urges the Board to prescribe some interim arrangement, preserving the status quo and orderly labour relations until these matters can be formally adjudicated (i.e. for several weeks).

36. The competing unions also urged the Board to prescribe the "status quo", in the interests of

the members, and pending adjudication of their rights. But the unions define that "status quo" in their own way and in their own interest.

37. The Steelworkers and the dissenting locals wish to leave in place the representatives who have serviced the members before, but who, of course, may have now declared their loyalty to, and become employed by, the Steelworkers' organization. RWDSU International urges the Board to respect the processes prescribed in the International Union Constitution which, it says, defines the status quo that has been violated by the dissenting local officers. Counsel for RWDSU International refers the Board to the decision of the Court of Appeal in *Astgen, et al, v. Smith, et al*, [1970] 1 O.R. 129, and urges the Board not to depart from its expressed reluctance to interfere in internal union affairs. In counsel's submission, to tell the RWDSU who could represent its members on an interim basis - indeed, to direct that they be represented by employees of another union - would amount to a serious and unwarranted interference with the rights of the RWDSU established in its Constitution. It would reward the dissenting local officers for their own Constitutional misconduct, and would lead to the disruption of settled collective bargaining relationships.

54. The hearing to consider this first interim order took place on July 23 and July 27, 1993. On July 29, 1993 the Board issued the following decision:

1. Applications have been filed with the Ontario Labour Relations Board to determine which trade union now represents employees working at a number of New Dominion/A & P stores in Southern Ontario.

2. More than one trade union now claims to represent those employees.

3. The applications raise legal and practical problems which cannot be easily resolved on a short-term, interim basis.

4. On the other hand, a hearing in this matter is currently scheduled to begin before the Board on August 9, 1993. That proceeding is expected to take several days, and will decide, among other things, which union is now entitled to represent the employees.

5. The employer and the various unions all submit that it is important that the employees' right to representation not be prejudiced while this case is being considered by the Board.

6. The employer stresses the importance of its being able to carry on business as usual, so that this dispute between trade unions does not interfere with the interests of the employer or the employees.

7. All parties agree that uncertainty is undesirable. Despite the dispute between unions, employees should know whom to approach for help if they have an employment problem.

8. But the union parties are unable to agree among themselves on any interim arrangement so employees may be fairly assured of union assistance in their dealings with their employer, should they require such assistance over the next few weeks.

9. On July 23, 1993 and July 27, 1993 the Board held a hearing to consider whether it should impose some interim arrangement governing the employer's labour relations while the case is before the Board, and, if so, what that arrangement should be. The various unions and the employer were all represented by lawyers and made submissions about whether an interim arrangement was appropriate, and what such arrangement might be.

10. Having heard the parties' submissions, the Board orders that:

- (1) Until the Board determines which trade union has bargaining rights for and is entitled to represent the employees of New Dominion/A & P stores in its Southern Ontario stores, and unless the Board otherwise directs, the employees at each store will continue to be represented in their dealings

with their employer by the individual union representative(s) who customarily dealt with their employment problems prior to July 10, 1993.

- (2) Until the Board determines which union has bargaining rights and is entitled to represent the employees of New Dominion/A & P stores in its Southern Ontario stores, the employer's local store managers and other managerial personnel may continue to deal with the individual union representative(s) with whom they have customarily dealt in respect of employer-employee matters prior to July 10, 1993.

11. The Board wishes to make it clear that in making this interim order, it is not indicating a preference or support for any of the trade unions involved. The Board's concern is to preserve orderly labour relations until the dispute between the trade unions is resolved.

12. Finally, the Board directs that copies of this decision be provided to all of the company's store managers and that it be posted, immediately, in each store, where it will most likely come to the attention of the employees.

55. On August 12, the MacDowell panel issued formal reasons for its interim Order which include this passage:

40. The legal and labour relations problems posed by this case are quite unusual, and seem to involve a mixture of public and private law which the Board has seldom been called upon to consider. The *Labour Relations Act* is primarily concerned about institutional collective bargaining relationships - the trade union in its role as *statutory bargaining agent*. The Statute does not purport to regulate internal union affairs, nor does it prescribe any general code of "democratic practice" (see: *CSAO National (Inc.) and Oakville Trafalgar Memorial Hospital Association*, [1972] 2 O.R. 498). Indeed, the Statute is exceedingly (and we think intentionally) sparse in respect of such matters, leaving them to be determined, for the most part, in accordance with the union's Constitution. It is the union Constitution which prescribes the rights of members within that organization, eligibility for office, elections, dues levels, property rights and so on; and where the Statute does provide a platform for potential intervention (the duty of fair representation, for example), the Board has been careful not to intrude upon internal union matters not covered by the statutory duty.

41. On the other hand, the "club" or "private-contract model" of trade unionism discussed in *Asigen v. Smith*, *supra*, is not a complete answer either; nor does it fully capture the statutory dimension of trade unionism, or the array of statutory rights and responsibilities exercised by a modern trade union under the *Labour Relations Act*. For the fact is, a trade union is not a voluntary organization like a club or a church, held together by some notional "common-law contract" between the members. Not untypically (as in this case), membership is not a matter of voluntary contract, but is required as a condition of employment by virtue of a collective agreement whose existence and attributes depend primarily, if not entirely, upon the Statute; moreover, the trade union acquires and retains the status of bargaining agent for employees, who become its members, in accordance with that same Statute.

42. In this sense, the union is not a wholly private organization. It receives statutory support in order to facilitate the statutory objectives spelled out in Article 2.1 of the Act and it has a variety of statutory rights and responsibilities. And, of course, bargaining rights do not depend upon the continuing support of the very employees (members or not) who first established the union's status as bargaining agent, nor does the union exercise those bargaining rights solely in respect of its members, nor does the continuation of its exclusive bargaining agency depend solely on the union's Constitutional arrangements.

43. The problems posed in this case involve a mix of public and private law, as well as a mix of private interests and public policy considerations. And they are not easy questions to answer when "private" Constitutional re-arrangement may have statutory or public law consequences.

44. However, in this *interim decision*, we do not have to come to any final conclusion about either the Constitutional correctness of the steps the union parties have taken, or the relation-

ship between those steps and the parties' rights and responsibilities under the *Labour Relations Act*. The above remarks are only intended to describe the nature of the problem. For present purposes, we need only decide, as we do, that there is a legitimate representational dispute between the union parties which must be decided by this Board, and which can only be decided by this Board which has the exclusive jurisdiction to apply the terms of section 63 of the Act to the facts at hand. To put the matter another way: in a statutory regime which depends upon the identification of an exclusive bargaining agent for a defined group of employees, it is the Board which must ultimately determine who that bargaining agent is, when competing unions make that claim; and for present purposes, this panel need only decide whether some *interim order* is desirable pending a resolution of these questions.

45. All of the union parties in this matter point to their history of representing employees in Ontario. All of the union parties assert that the interests of the employees are important and should not be prejudiced while the legal controversy is being decided by the Board. All of the union parties assert that they are ready, willing and able to represent the employees working in the employer's food stores in Southern Ontario while the case is before the Board. And, no doubt they are. But none of the unions is able to agree on how this can be done, and each asserts that the others will take "political advantage" of any interim arrangement which leaves its partisans in place, with preferred access to the members whose loyalties they seek to win; moreover, in the absence of either an agreement between the unions, or a Board-imposed arrangement, the employer is left to cope with these competing claims on a day-to-day basis in some one hundred food stores, while the employees will be uncertain about whom to turn to if they have an employment problem. That is not a desirable state of affairs from the perspective of either the employer or the employees who, in some sense, are both "third parties" to this controversy between unions. Nor is it congruent with the concept of an *exclusive* bargaining agent, which is an integral part of the statutory scheme, and is designed to avoid problems of this kind.

46. We are not entirely sanguine about intruding into the internal affairs of a trade union; for there is much to be said for Mr. Paliare's submission that this is an unusual course of action. Nevertheless, we are satisfied that it is in the interests of the employer and the employees that the status quo as at July 10 be maintained until the case before the Board can be completed (i.e. a few weeks). And that is the interim order that we made pursuant to section 92.1 of the Act.

47. The "status quo" that we are preserving is essentially the situation which obtained prior to the events which have now given rise to controversy; and, if we take the RWDSU International at its word, it is also the situation which would have prevailed after October 1, 1993, if the dissenting locals had quietly disaffiliated in accordance with the terms of the merger agreement, with their officers and employees intact. Most important, though, this "status quo" maintains the historical and continuing personal relationship which union representatives had with store managers and with the employees at the stores which they serviced. In our opinion, those are the representatives who are most likely to be familiar with and able to address any employment problems which arise over the next few weeks, and who are best able to deal with the store managers in the locations where such problems arise.

48. In making this interim arrangement, we recognize that partisans left in place may be tempted to exploit their position for political purposes. But that is likely to be the case whichever union is able to put its loyalists into the workplace, with preferred access to the members whose support they seek to win. In the unusual context of this case, it is not very helpful to try to compare the relative harm to the union parties (which in any case seems evenly balanced), and there is little that the Board can do about these union politics, other than to assure employees that it takes no position as between the contending unions. And, of course, as in many political situations, the individuals affected are perfectly capable of assessing the motives and merits of the competing "politicians". Meanwhile, we think it is important that employees be assured of continued representation, if they need it, by persons familiar with the stores in which they work, and it is important that the local store managers know who they may deal with over the next several weeks.

49. In our opinion, the best (albeit imperfect) way to accomplish these latter objectives, to balance the competing interests, on a short-term basis, and to promote harmonious labour relations, industrial stability and effective dispute resolution, is with the interim order set out above.

56. The Board recognized that its interim Order would give a “tactical” advantage to the Steelworkers. Virtually all of the officers and representatives of the RWDSU in Canada had shifted to the Steelworkers, leaving the American Parent without Canadian personnel in place, other than those it could “borrow” from the UFCW, or transfer from the Northern Ontario locals that had opted to merge with the UFCW. Permitting those representatives to continue to service the workers they had serviced before might strengthen the Steelworkers’ attraction to the employees - just as their removal (which the American Parent wanted to do) and replacement by UFCW officials might strengthen the hand of that union. The Board also recognized that the partisans left in place might continue to use the position confirmed by the interim Order to further the organizational objectives of the union they preferred. Nevertheless, the Board was persuaded that the best interim solution was that described in its interim Order - leaving in place those “human agents” who actually serviced the employees in the past, while the identity or status of the statutory bargaining agent was determined by the litigation about to begin before the Chair of the Board.

57. There was every expectation that this would be a “test case” which, at the very least, would guide the parties in similar situations, and that the interim Order would be temporary. No one expected the subsequent eruption, or the scale of the inter-union conflict. Certainly no one expected that the events and issues to be considered by the Chair, might have to be reviewed in two hundred separate applications.

### **The Second Interim Order**

58. The interim Order of July 29, 1993 was not the only one that the Board was called upon to make. Nor was this direction even complied with.

59. On July 27, at the first hearing, A & P maintained that it was “neutral”. It said it did not favour one union or the other. Later, though, A & P abandoned that neutral position and tilted in favour of the UFCW (and/or RWDSU International which was merging with the UFCW).

60. Despite the first interim Order, A & P sought to avoid dealing with the individuals whom the Board had declared were to represent employee interests, on an interim basis, as they had done in the past. At the same time, RWDSU International, the American Parent, insisted that *its* designees represent employees at the local store level - even though they had never done so before - and these strangers began to appear on the employer’s doorstep demanding contact with and the right to represent employees. A & P, now tilting towards UFCW, was prepared to allow that to happen, and, at the same time, had taken steps to limit the activities of union officials who were Steelworker supporters. This prompted a further interim application by the Steelworkers, to clarify, amplify, and enforce the earlier Board Order.

61. The second application for interim relief came on before a new panel the Board (Robert Herman, Vice-Chair, and Board Members R. W. Pirrie and J. Redshaw) on August 26, 1993. The Board concluded, among other things:

15. We were satisfied that the responding parties had not been following the prior decision of the Board in all respects, whether through inadvertence, confusion or intention to subvert. In that regard (and notwithstanding some serious reservations about the Board intruding on what, at least in part, can be characterized as internal union matters), we were satisfied that it was appropriate to make further interim directions in order to clarify or simplify the prior decision of the MacDowell panel and to ensure that the *statutory rights of the participants were protected*. Any confusion or possible misunderstanding by the parties can thereby be eliminated.

16. But quite apart from problems which continued to exist despite the decision of the MacDowell panel, and as noted above, there have been other changes at the A & P stores in question, particularly with respect to the position and actions of A & P. These were not matters previ-

ously before the Board. There was no allegation before the MacDowell panel that the employer had departed from a position of strict neutrality. Indeed, A & P's position was that it wanted to remain neutral; and the MacDowell panel appears to have accepted that position and responded accordingly.

17. The Board was satisfied that these facts (largely undisputed we might add), justify further interim relief. The applicant has pleaded, at the very least, an arguable case that A & P has engaged in unlawful, discriminatory activity, in its cancellation of the leaves of absence to the applicant's supporters, while granting and maintaining leaves of absence for the supporters of RWDSU International.

The Board then went on to say:

18. This is not an internal union matter. Rather, this is a question of ensuring that the rights of employees and unions under the *Labour Relations Act* are protected. It is a question of ensuring that the employees have the ability to choose freely between potential bargaining agents, and that potential bargaining agents have not unfairly been discriminated against with respect to access to employees.

19. We recognize that the circumstances before us are somewhat unique, in that the Board's decision (which the parties are currently awaiting) will likely determine which of the unions before us will be entitled to continue to exclusively represent the employees in question. It may be that access to employees during the intervening period, while awaiting such decision, has no practical significance. However, at this stage, it is more likely that there may be some practical ramifications arising from access to employees, and the ability to politic and lobby at the workplace pending the the Board's final decision. In these circumstances, and given that the Board's decision is likely to issue in the near future, the Board considered it appropriate to ensure that during the intervening period the employer does not actively support either union at the expense of the other.

20. Accordingly, and as directed at the hearing on August 26, 1993, the Board granted the following relief:

1. The Board directs that those individual unions representatives who have customarily dealt with the day to day employment issues or problems in the workplace, prior to July 10, 1993, shall continue exclusively to be able to deal with them.
2. With respect to the four individuals whose leaves of absence were rescinded by A & P, those leaves are to be reinstated forthwith, on the terms and conditions under which the leaves were originally granted, as if the leaves of absence had never been rescinded.
3. All notices to any persons purporting to confer authority contrary to the Board's decision herein and the Board's directions of July 29, 1993 are to be withdrawn by the parties who issued them. In this respect, the parties might direct their attention to the material filed at Tabs 9, 11, 13, and 14 of the Exhibit Book filed by the applicant.
4. The company is directed to send copies of this decision to all of the company's store managers and this decision is to be posted immediately in each store, where it will most likely come to the attention of the employees.
5. These orders are limited to the A & P stores where the applicant is involved.
6. These orders or directions are to apply until the decision on the merits issues and concludes otherwise, or until the Board otherwise directs.

21. The intent of these orders is to ensure that employment related problems arising at the store level continue to be dealt with by the union people who had customarily dealt with them prior to

July 10, 1993. Our direction is not restricted to the grievance procedure, but is intended to maintain the general status quo with respect to employment problems and union representation at the local store level. This arrangement will ensure that employee representation rights do not suffer while awaiting the Board's decision on the merits. That decision will likely decide which union is entitled exclusively to represent the employees in question, in which case that decision will supersede in those respects our decision given herein. But until then, or until the Board otherwise declares, the customary people are entitled to service the bargaining unit employees as they did before, and A & P is required to deal with these people. Given the imposition of the trusteeship, there may as a practical matter arise problems which realistically require all the parties to agree to defer their resolution until the Board's final decision issues. However, that is a matter of agreement between the parties.

22. Again, as did the MacDowell panel, we wish to emphasize that the Board does not support or prefer one union over another. Those sorts of decisions are not for us to make, nor should we be commenting in any respect on those decisions. What is our responsibility however, is to ensure that statutory rights set out in the *Labour Relations Act* are preserved pending a resolution of this dispute. Here, interim relief was necessary in order to fulfil that purpose.

23. We have issued these reasons quickly, in order to be able to quickly notify employees affected of the circumstances, and hopefully thereby to reduce the obvious confusion and uncertainty in the workplace, and to lessen the likelihood of further problems needing Board intervention. More complete reasons may follow at a later date.

62. Both of these interim Orders sought to avoid any pre-judgement of the legal questions then being litigated before the Chair (i.e., how section 63 applied to the purported merger, and which union was therefore the exclusive bargaining agent for 5,000 employees working for A & P). Both interim Orders create a "half-way house" in which the actual responsibility for representing employees is vested in the *individuals* who have customarily done so - regardless of their particular partisan allegiance, and regardless of which union ultimately turns out to have statutory bargaining rights. Both panels noted that this solution was at variance with the Board's inclination and the scheme of the Act (which presupposes an exclusive *union* bargaining agent, not human agents). However, it seemed sensible as an interim arrangement for the few weeks that it would take to resolve the main application, and it meant that the individuals familiar with local employee concerns would continue to deal with those concerns.

63. No one expected that the Orders of the Board would be disobeyed or would last for much longer than a few weeks; and for this short period it seemed reasonable that the *persons* who had customarily represented employee interests, and had actually represented employees "on the ground" continue to play that role until the Board had sorted out the identity of the statutory bargaining agent.

### The A & P Decision

## I

64. The main successor rights application (the A & P case) came on before the Chair, as scheduled, on August 9, 1993, and continued from day to day thereafter until it was completed. All parties were represented by counsel and had the opportunity to lead evidence and make submissions. At the end of the hearing (which consumed several days) the Chair reserved her decision - thereby generating a short hiatus, in which the Board made the second interim Order to which we have already referred. The Chair issued her decision, with reasons, on September 23, 1993.

65. It is important to reiterate that one of the central questions before Chair McCormack was the legal effect of the delegate meetings on July 10-11. It is also important to reiterate that the American Parent had every opportunity to lead whatever evidence it wanted or had about those

events. Lenore Miller was present and chaired the July 10 meeting, in her official capacity as president of the American Parent. She did not then raise any objection to the seating, credentials, selection or authority of the delegates.

66. Ms. Miller was also present instructing counsel both in the interim proceeding before the MacDowell panel and in the main hearings before the Chair. Ms. Miller provided declarations in connection with the first request for interim relief, as did other local supporters of the American Parent and the UFCW merger. Ms. Miller's declaration in *this* proceeding refers to her earlier one, contradicts statements made by Mr. Collins, and notes that many of the issues were raised before Chair McCormack in *A & P*.

67. But neither Ms. Miller, nor any other official, gave evidence in the proceeding before Chair McCormack.

68. Thomas Collins, the former Canadian Director of RWDSU, did give extensive evidence in the *A & P* case and was subject to cross-examination by counsel for the American Parent. Mr. Collins testified, among other things about: why he and other Canadian officials were opposed to the UFCW merger; the way in which their opposition was received by the American Parent; the steps which they took to disaffiliate from the RWDSU International; and how and why those Canadian officials and delegates then sought to carry the Canadian locals into affiliation with the Steelworkers. He also gave evidence about the location of bargaining rights, how those bargaining rights were exercised at the local level (i.e., whether they were held by the Ontario locals or the American Parent), and the role of the American Parent in local collective bargaining affairs [see generally the recitation of facts in the Chair's decision of September 23].

69. In weighing the legal and labour relations realities of the situation now before us - including the various declarations of Ms. Miller and others - we do not think we can ignore the fact that the Parent International (now part of the UFCW) had the opportunity before Chair McCormack to raise, and support by evidence, any challenges it may have had to the events that took place at the delegate convention of July 10-11.

70. It may be that Mr. Collins' description of those events is not accurate. But if that is the case, one would have expected the American Parent to call evidence to that effect - particularly since Ms. Miller was present at the Board hearing in Toronto and her actions were part of the controversy. Ms. Miller, Mr. Jenner, and Mr. McArthur all filed declarations in the interim proceedings in *A & P*. But the American Parent, for whatever reason, chose not to call evidence or be cross-examined about these events. Ms. Miller, Mr. Jenner, and Mr. McArthur did not give evidence about what they had said in their declarations. By contrast, Mr. Collins did give evidence and did submit to cross-examination.

71. This panel has no inclination to question or review the factual or legal findings of the Chair in *A & P*. By virtue of section 108 of the Act, those questions of fact and law are "final and conclusive for all purposes" and, we think, that includes later interim relief proceedings involving essentially the same parties. However, we need not finally decide whether, as a matter of law, the findings in *A & P* are "*res judicata*", or "*in rem*", because the real protagonists and the real issues appear to be much the same in all of the other successor rights applications yet to be determined.

72. We do conclude that the findings and analysis in *A & P* are a significant part of the legal landscape which cannot be ignored in the "new" successor rights proceedings that, in substance, are between the same union rivals, who ask the Board to decide, once again, whether the circumstances and events of July 10-11 are such as to establish:

- (1) that the particular Ontario locals, *not* the American Parent, held the bargaining rights prior to mid July; and
- (2) that those locals, too, have merged with the Steelworkers in the same way that Local 414 did.

At the very least, the successorship issues (i.e., the application of section 63) are similar, and the real “players” are the same.

73. In the circumstances, it is useful to review the *A & P* decision in some detail.

## II

74. The September 23 decision begins with a long review of the facts (paragraphs 3-48) where the Board records the opposition to the UFCW merger at all official levels within the RWDSU Canadian section, including the Canadian director, at least five of the Canadian Vice-Presidents, and the Canadian District Council which was an umbrella organization for the Canadian locals of the RWDSU. The decision then details some of the meetings and consultation that took place across Canada, as the Canadian officials debated the desirability of merging with the UFCW (which was a rival in Canada) and explored the alternatives. Those alternatives included the creation of an independent Canadian organization, or the merger with a trade union other than the UFCW. For example, Robin McArthur, now a UFCW supporter, was once suggesting that the RWDSU Canadian group consider merger with the Teamsters Union.

75. The Canadian components of the RWDSU had to decide what they would do if the UFCW merger was rejected; and what some wanted to do was very different from the scenario envisaged by the American Parent.

76. The *A & P* decision also details the escalating friction between the Canadian officers of the union and their American counterparts, as well as the unsuccessful efforts of Bob White, the President of the Canadian Labour Congress, to effect an “amicable divorce”, as had been done with the Canadian section of the United Automobile workers. The Board finds that there were numerous meetings across Canada prior to the meeting on July 10-11, and reviews in detail not here relevant, what took place at that meeting which on the first day, (chaired by Lenore Miller), rejected the UFCW merger proposal, and the following day (chaired by the President of the Ontario Federation of Labour), purported to create a new organization called “RWDSU Canada” that was then merged with the Steelworkers. The Board then outlines some of the responses of the Parent International:

47. On July 12, the International placed five of the southern Ontario locals into trusteeship, including Local 414. The reasons cited were that the locals disaffiliated without the approval of the International Executive Board and then merged with the USWA, and the utilization of funds, assets and property in this regard. On that same day, a number of officers and staff resigned, including Mr. Collins and Mr. Waters. Subsequently, the International redirected the mail and the telephone number of the Mississauga office to a new location and made several directions with respect to funds, which led to the banks freezing the bank accounts. In addition, letters were sent to a number of employers in collective bargaining relationships with the locals placed under trusteeship, redirecting the dues. Some of those employers responded by cancelling negotiating and grievance meetings and placing the dues in escrow until the dispute was resolved. Mr. McArthur was appointed as Mr. Dickinson’s official agent for the five locals in trusteeship. He then purported to cancel the leaves of absence granted by employers for five members of Local 414, including the President, two members of the Local Executive Board and two stewards, and appointed a number of other people to represent the locals.

77. It was these actions by the American Parent that prompted the unfair labour practice complaint. The Canadian officials (by then under the Steelworkers' umbrella) claimed that the American Parent was using its powers under the union Constitution to force a merger with the UFCW, despite the delegate vote against it, and that this contravened the *Labour Relations Act* in various ways. The Steelworkers (and the local RWDSU officials) argued that the disaffiliation process was a charade because the American Parent intended to use its powers to prevent the locals from regrouping.

### III

78. The "legal portion" of the decision has two aspects which are relevant to the current proceeding, because the same questions are raised in the 200 or so other successor rights applications which the Board has yet to consider.

79. In the *A & P* case, the Board found that statutory bargaining rights were held and exercised by Ontario Local 414 of the RWDSU, despite the American Parent's assertion that the American Parent held the bargaining rights. The Board further found that the events of July 10-11 had effected a disaffiliation of the Canadian section from the International (an eventuality that the American Parent did not expect until October 1, 1993 - now past), and that pursuant to section 63 of the Act, there was a successorship vis a vis "RWDSU Canada", then a second one with respect to the United Steelworkers of America.

80. Both findings were significant for the ultimate result in the case; for if bargaining rights had vested in the American Parent rather than Local 414, it would not have mattered whether Local 414 had successfully disengaged from the American Parent, then affiliated with the Steelworkers. Both findings are integral to the "final and binding" determination which the Board made. And of course, the American Parent was a party to those proceedings, as it is (now merged with the UFCW) in the later successor rights cases.

81. In determining who held bargaining rights, the Board had to consider both the practice of local administration which was established in the evidence, portions of the International Constitution, and the Local 414 by-laws. Mr. Collins' evidence outlined that practice and his testimony was uncontradicted. The internal Constitutional arrangements included these provisions, recorded at paragraph 72 of the Board's decision:

[International Constitution]:

Section 9.(a) All members of a local union are members of the Retail, Wholesale and Department Store Union and are subject to the orders, rulings and decisions of the International Union and its properly constituted officers.

(b) Subject to the provisions of Article XVII, *the local union to which the member belongs is irrevocably designated, authorized and empowered by him exclusively to represent him for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment or any terms or conditions of employment, and for the negotiations, execution, revision and termination of contracts with employers covering all such matters.*

(c) *The local union to which the member belongs is irrevocably designated, authorized and empowered by him exclusively to appear and act for him and in his behalf before any board, court, committee or other tribunal in any manner affecting his status as an employee or as a member of his local union and exclusively to act as his agent to represent or bind him in the presentation, prosecution, adjustment or settlement of all grievances, complaints, disputes or any kind of character arising out of the employer and employee relationship as fully and to all intents and purposes as he might or could do if personally present.*

(d) The power given to the local union under clauses (b) and (c) hereof may with the consent of the local union be exercised by the International Union or its designee.

(emphasis added)

[Article XVII]

• • •

Section 2. *The right to bargain collectively for the whole membership of a local union shall lie with the Executive Board of the local union or officers designated by it and with the International Union or its Representative when the local union so requests.*

Section 3. The International Executive Board shall guide and advise the course of negotiations by the local unions.

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[Local 414's by-laws]

Section 2 - The unit shall concern itself with matters pertaining to the negotiation of a Collective Agreement under the supervision of the International union and in accordance with the policies devised by policy committees.

Section 3 - After a Collective Agreement has been negotiated, the unit is responsible for the processing of grievances in accordance with the Collective Agreement. *The unit is responsible for [sic] the Local for its actions, and the Local is the governing body in the province.*

(emphasis added)

82. In the Board's view, the bargaining practice and constitutional framework were sufficient to displace any inference flowing from the fact that the name of RWDSU International appeared on the opening page of the A & P collective agreement, along with that of Locals 414, 429, 545, 579, 582 and 915. The Board did not have to decide how, in a regime of exclusive bargaining agency, bargaining rights could be "shared", because the Board concluded that as a matter of fact and law, bargaining rights were not shared but rested with the local union. The Board did note, parenthetically, that in a legal regime based upon *exclusive* bargaining agency, it might not be possible for two unions to "share" bargaining rights.

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83. On the successorship aspect of the case, the Chair reviewed the Board's developing jurisprudence under section 63, noting that the focus of the section was the acquisition of rights, privileges and duties *under the Act* - particularly the status of statutory bargaining agent - rather than the "property" or "political" rights of persons within the union, or of union members in relation to each other. At paragraph 53, the Board wrote:

53. In the last decade, it is fair to say that the Board has moved further away from the *Astgen v. Smith* approach, emphasizing the significant difference between the common law property rights addressed by the courts, and the scheme of the *Labour Relations Act* in providing for bargaining rights and the successorship of those rights. In *Waterloo Spinning Mills, supra*, the Board noted the distinctions between the club model of a union at common law, and the statutory position of a union under the Act:

At common law (i.e., before the passage of modern labour legislation some forty years ago), a trade union was merely a voluntary association of employees, like a club, acting collectively in pursuit of their common interests and without any statutory

framework or underpinnings. Indeed, for a time, trade unions and their activities attracted common law sanctions because such collective action amounted to a civil conspiracy in restraint of trade. However, to determine whether one trade union has acquired the *statutory* rights and obligations of another - that is, to determine the application of section 62 [now section 63] of the Act - one cannot ignore the statutory framework or forget that unions no longer operate (as they once did) in a legislative vacuum. Trade unions, like clubs, may well be able to exist without direct reference to the *Labour Relations Act*, but the fact is that if a trade union is to do what by statute it must do to preserve its status as a union under the Act, it must conform to statutory norms.

A modern trade union is very different from a typical club. It is concerned primarily with the acquisition and exercise of statutory bargaining rights. What club or mere voluntary association has the exclusive statutory right to determine its members' terms and conditions of employment - regardless of what those members might think from time to time? What voluntary association in pursuit of its constitutional objectives has the right to act on behalf of and fundamentally affect the rights of persons who are not its members and who may never have voluntarily subscribed to those objectives? What club has a statutory obligation to fairly represent *non-members*, where necessary, expending *membership* funds to do so? What club can compel the payment of membership fees from members and non-members alike? How realistic is it to treat a trade union as a "voluntary" association when the reality is that membership may be made a compulsory condition of employment? In the present case, membership in the Association has been made a condition of employment for a number of employees. The fact is that while at common law a trade union may still be only a voluntary association, under the *Labour Relations Act* it is much more than that, and when considering the acquisition, exercise of transfer of rights rooted in the statute, one cannot ignore either the practical or legal differences. Likewise, in trying to ascertain a union's essential objects (in an *Astgen v. Smith* sense) we think the statute provides a guideline - at least in the absence of explicit conditions in the union's own constitution.

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This is not to say, of course, that the constitution of a trade union is irrelevant to the Board. It is obviously an important document and in particular cases or contexts, its terms may be decisive. But it does not have the central role which it plays at common law in resolving disputes among the members over the use or distribution of assets, eligibility for office, the conduction of elections, the pursuit of the organization's objectives, and so on.

84. The Board then went on to conclude that complete constitutional correctness was not a prerequisite to a successorship declaration, provided that there was sufficient compliance with constitutional norms or objectives, and sufficient indication that the merger (etc.) decision was sanctioned by the membership or accomplished through an appropriately-constituted decision-making body. In other words, the Board found that statutory bargaining rights were not necessarily transferred, or necessarily transferable, merely because union officials had made Constitutional provisions to that effect. Bargaining rights were not an "asset", that unions could trade between themselves in this way. Conversely, statutory bargaining rights could pass from one union to another (i.e., that there could be a successorship under section 63) without the compliance with the anticipated transfer arrangements. That result depended upon the way in which the transfer mechanism was structured, how it worked in practice, and its relationship to the usual way that the union did important business. It was the Board, not the unions, which ultimately had jurisdiction to apply section 63, with or without a representation vote (an indication, in itself, that "constitutionalism" might not govern). Thus, at paragraph 97, the Board observed:

97. The International also argues that the delegates were not authorized to vote to create the new national organization. The applicant contends that if the delegates were good enough to

vote on the UFCW merger or disaffiliation on behalf of Local 414, they were good enough to vote for affiliation as well, and there is some merit to this perspective. More significantly, however, these delegates were not elected just to vote on the UFCW merger. They were elected at the Local 414 convention in May as members of the Local Executive Board, who were empowered by the by-laws to attend conventions on behalf of the Local. This practice of standing delegates was recognized by the International constitution and in the notice of the July 10th UFCW merger vote meeting. There were no specific restrictions placed on their authority at the time of their election, and it can hardly be said that voting on the UFCW merger or disaffiliation is of less gravity than voting for affiliation with RWDSU Canada. As a result, this argument is unpersuasive as well.

85. The Board then dealt with a variety of other objections to the delegate meeting of July 10-11: whether there was sufficient notice of the meeting; whether the agenda was properly itemized; whether the delegates had sufficient time to study the proposed merger with the Steelworkers; whether certain delegates were or were not entitled to vote on such issues; etc. In each case, the objections were reviewed, considered, and rejected.

86. Finally, the Board concluded that in all the circumstances, it was not disposed to exercise its discretion under section 63(2) to direct a representation vote. Those circumstances included the reluctance to turn a successorship proceeding into a "mid-term raid" by a third-party union, substantial compliance with the process that the UFCW and the American Parent had themselves established to decide issues of this kind (which did not involve a membership referendum), and the difficulty in framing the ballot to reflect the real choices for employees and the real actors in the piece.

87. The Board was satisfied that the delegate voting process provided a meaningful opportunity for membership wishes to be expressed, and noted at paragraph 132:

... Employees always have the option of applying at the appropriate time for a declaration terminating the successor union's bargaining rights or replacing it with another union. ...

Regardless of the result of this Constitutional wrangling, the employees would always be entitled to oust their bargaining agent (whoever it is) at the time provided by the Statute: during the last two months of their collective agreement (see sections 57-63 and 5-9 of the Act). During this "open period", employees would have the opportunity, as they always have, to "go non-union", or choose another union to represent them. The Board did not consider it appropriate to direct a vote which would not be a final answer in any case.

88. It is against that background that we must now weigh the submission of the RWDSU District Council of the United Food and Commercial Workers International Union and its Locals 414, 440 and 1000 (the American Parent now merged with the UFCW which may or may not include the Canadian section) that the other successor rights applications now pending before the Board are very different - that there are different employers involved, or that the situation of other locals is different, or that there is, for example, analytical significance in contract words which say "RWDSU and its Local X" as opposed to "RWDSU" with a gap on the page before a listed local; or that there were defects in the July 10-11 process not put before or accepted by Chair McCormack.

89. There may very well be legally significant differences in these various files. But the applicant's supporting material suggests that there are not, and the Chair's decision of September 23 is at least the starting point for analyzing any differences said to command a different result.

90. The decision of September 23 is currently the subject of an application for judicial review. No Court hearing day has been set. Nor has there been any application to the Court to

“stay” the Board’s September 23 decision - although to be fair to the UFCW/American Parent, it is not clear what such “stay” would mean, unless the Court were also disposed (and had jurisdiction) to award interim bargaining rights to one of the rival unions.

91. There is also a request for reconsideration by employees from 9 (of about 100) A & P stores who claim they did not have notice of the proceeding. To that request, A & P replies that notice was posted, in accordance with the Board’s Rules. So does the Steelworkers union. Accordingly, there is a factual dispute in the reconsideration application which will have to be decided.

92. The reconsideration hearing began on November 30, and is continuing at the time of writing. There is no indication when it will be completed.

93. Chair McCormack did not issue a decision in respect of the Steelworkers’ unfair labour practice charges which she heard together with the companion successor rights application. She wrote:

134. Lastly, it became apparent during the case that a decision with respect to the successor rights issue might be of some assistance to the parties in resolving the unfair labour practice allegations. In the circumstances, a settlement of the section 91 complaint would be preferable in terms of the labour relations climate between the various unions involved. As a result, although I have heard all the evidence with respect to this complaint, I have not recited some of it in this regard, and I am adjourning the complaint *sine die* to give the parties a further opportunity for settlement. If they are unable to resolve the matter, any party may request a decision on the section 91 complaint by writing to the Board. I remain seized of both matters.

Obviously, the Chair did not want to inflame an already acrimonious dispute by referring to behaviour that might be seen as disreputable whether or not it was illegal.

94. We do not know when the unfair labour practice ruling will be made, nor is it apparent how it would assist this panel one way or the other.

### **The Current Disorder**

95. It was hoped and anticipated that the A & P situation (involving the largest bargaining unit and the largest Ontario local) would be the “test case” that would permit the rival union parties to resolve the competition for bargaining rights with respect to other employees, and other local unions, that, like Local 414, had participated in the purported merger meeting on July 10-11. But that was not the case - hence the 200 or so successor rights applications brought by “the Steelworkers”, the UFCW’s intervention in those applications, and the prospect of litigating every one of them, if necessary.

96. Given the parties’ current relationship, the vagaries of litigation, and the resources of the Board, there is no prospect whatsoever that these cases will come to an early conclusion. On the contrary. There is every indication that the litigation will drag on for months, and that the “legal war” will escalate as new proceedings are brought in one form, or forum, or another.

97. The labour relations impact of all of this is depressingly clear: confusion and collective bargaining paralysis for numerous employers, large and small, and thousands of employees in this Province.

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98. The statutory scheme of collective bargaining envisages a mutual duty to bargain in good faith, and periodic re-negotiation of collective agreements on a fixed timetable. The Act

envisages that collective bargaining may begin ninety days prior to the expiry of a collective agreement (section 54) with a view to concluding a new one, if possible, before the end of that agreement, without a strike or lock-out.

99. That is not happening. Since July 1993, the bargaining cycle has been totally frustrated.

100. Tom Collins' declaration lists a number of collective agreements for which bargaining is overdue, together with certain other information about those collective bargaining relationships. This is the list: *The Bay*/Local 1000 - 6 contracts for a now combined bargaining unit of 1000 employees; multiple "*Mr. Grocer*" franchisees and Local 414 whose collective agreement expired January 31, 1993; "*No Frills*" franchisees and Local 414 whose collective agreement expired April 30, 1993; *Hostess Frito-Lay* and Local 461, where the 410 employees are bound by two collective agreements that expired January 5, 1993; *Spalding Canada* and Local 440, where the collective agreement expired July 31, 1993; *Colonial Furniture*, whose collective agreement expires January 1, 1994; *Weston Bakeries* and Local 461, where the collective agreement binding 225 employees expired November 15, 1993; *TRS Food Services*, whose collective agreement involves Local 461, covers 110 employees and expired May 9 and August 31, 1993; *Hershey Canada* and Local 461, where the collective agreement covers 500 employees and expires January 31, 1994; *The A & P Warehouse* part-time collective agreement involving Local 401 and some 100 employees that expired February 13, 1993; the *United Cooperatives* collective agreement involving Local 414 which expires December 31, 1993; and the *Hamilton Yellow Cab*/Local 1688 collective agreement which expires December 15, 1993 (where there is a termination application).

101. In these various situations, meaningful collective bargaining cannot occur. The number of such situations is increasing as time goes by.

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102. The Act prescribes that bargaining in respect of newly-certified bargaining units should begin within fifteen days of certification. In fact, if a union does not give timely notice to bargain or lets a period of sixty days go by without bargaining, its bargaining rights may be terminated (see section 60(2) of the Act). The following are newly-certified bargaining units in which collective bargaining has either been stalled or has never begun: *Metro, Diamond, and Co-Op Cab* companies (Local 1688 - approximately 2000-3000 Toronto employees), certified June, August 1993; *Central Chevrolet*/Local 414, certified January 29, 1993; *Checker Limousine*/Local 414, certified April 2, 1993; *Vanfax*/Local 414, certified April 16, 1993; *The Connection Group*/Local 414, certified April 2, 1993; *Loeb Club Plus, Woodstock*/Local 414, certified March 29, 1993; *Loeb IGA Lincoln Heights*/Local 414, certified November 9, 1992; *Loeb Carleton Place*/Local 414, certified February 19, 1993; *LOF Glass*/Local 414; certified April 16, 1993; *National Federation of Nurses*/Local 414, certified December 2, 1992; *Nivel*/Local 414, certified February 22, 1993; *Nordic Windows*/Local 414, certified May 21, 1993; *Katalin Lanczi*/Local 414, certified June 1, 1993; *Sifton Properties*/Local 414, certified July 21, 1993; and both *Union and Westway Taxi*.

103. We should note that although this impasse is frustrating for the Canadian officers of RWDSU locals who resisted the American Parent, and may be detrimental to the interests of employees and employers in Ontario, the Steelworkers argue that it is not necessarily detrimental to the strategic interests of the UFCW.

104. As we have already mentioned, virtually of the "human infrastructure" of the RWDSU in Canada rejected the UFCW merger and moved to the Steelworkers - leaving the UFCW with fewer resources in place with which to attack the Steelworkers or rally employee support. However, if the collective bargaining process grinds to a halt, any advantage of the Steelworker merger

may be nullified, the challenger may gain time, and the collective agreement "open periods" described above will present themselves. There will be an opportunity for "raids" regardless of the results of the successor rights application; and since the open period for "raiding" stays open until closed by the appointment of a conciliation officer, anything which delays that appointment enhances the UFCW's raiding opportunity. The Minister's decision not to appoint conciliation officers not only impedes bargaining, but also leaves the bargaining rights exposed, even if the Steelworkers have successfully acquired them.

105. Protracted litigation and paralysis may operate to the advantage of the UFCW and the American Parent; and in the Steelworkers' submission, that is their objective and intent. If they can frustrate the collective bargaining process, they may reap a harvest of disenchanted employees. The Steelworkers submit that "doing nothing is not neutral". But of course, in this sense, an Order in favour of the Steelworkers may not be "neutral" either (as the Board noted in its interim decisions in *A & P*), because it may bolster the Steelworkers' political advantage, and merely shift the burden of delay. Delay (which prolongs uncertainty and litigation) may well be undesirable from everyone's perspective.

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106. Day-to-day representation of employees continues to be shrouded in confusion because the UFCW/American Parent continue to assert that *they* represent the employees in Ontario locals, and continue to demand that employers recognize *their* agents for that purpose - for example, that dues from Canadian employees be remitted to the control of Guy Dickinson, the temporary Trustee of the Canadian District Council, who is located in New York (see Exhibit 17 to the Declaration of Tom Collins) or to Robin McArthur, a UFCW representative from Northern Ontario who held no official position in the Southern Ontario locals. As a practical matter, therefore, employers and employees cannot determine whom they are to deal with on a day-to-day basis, and employers are threatened with legal sanctions if they make the wrong choice.

107. Not surprisingly, many employers are taking a "neutral" stance - which means inaction - and are putting any dues monies in trust until the proper claimant is determined. But, of course, inaction, however prudent, is not neutral in its impact. Employees are paying "dues" in return for service. The money is not being used for that purpose.

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108. Section 45 of the Act provides that, during the term of a collective agreement, any dispute about its interpretation, application, administration, or alleged violation must be resolved by arbitration. Such problems arise from time to time, and to deal with them, most collective agreements have a grievance procedure. If grievances cannot be resolved at the local level, they are considered by union officials, and referred, as necessary, to an outside arbitrator.

109. But as things now stand, arbitration cases are being stalled or adjourned pending the identification of the bargaining agent, which, of course, shares the cost of the arbitration process, chooses counsel, and so on. Unless there is a union to do this - and only one union can - the arbitration process will not work. Examples include: *Hamilton Yellow Cab*, *Hershey Canada*, *Weston Bakeries*, and *City-Wide Taxi*, and the numbers will multiply as time goes on.

110. In one particular case, the Board itself directed reinstatement under section 69 of the Act (File 3993-91-U). There was a subsequent dispute over the terms of the employee's reinstatement. That employee is still out of work and the Ministry of Labour will not appoint an arbitrator under section 46 of the Act. And, it is interesting to note that in the UFCW application for interim

relief (2869-93-M) the supporting declaration cites the same kinds of collective bargaining problems.

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111. The above-noted problems are exacerbated because the Minister of Labour is also "caught in the middle" and has refused to appoint arbitrators or conciliation officers until his authority to do so has been clarified. When faced with competing claims from the two unions - to appoint, or not to appoint, or when to appoint - he too has opted for inaction. By letter dated November 8, 1993, the Director of Labour Management Services for the Ministry of Labour wrote as follows:

"Applications to the Minister for the appointment of Arbitrators and Conciliation Officers submitted by the Retail, Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America continue to be held up due to ongoing litigation between it and the International Retail, Wholesale and Department Store Union. These applications cannot be processed until such time as the Minister is satisfied that there is no longer any issue with respect to bargaining agent status".

That is why the Minister has filed the reference to the Board mentioned above. The Statute requires him to act, but the circumstances make it very difficult for him to do so.

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112. The employers are in the same position. They have statutory rights and obligations which they are unable to exercise or fulfil until they know which union they have to deal with. As one counsel asked, rhetorically: Who do we deal with if we have to close a store and work out the lay-off arrangement for the employees involved.

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113. The dilemma faced by the employers and the Minister arises from the fact that the statutory scheme requires both the *identification* and *stability* of a *single exclusive* bargaining agent, to exercise the rights and bear the responsibilities created by Statute. The scheme of collective bargaining simply cannot work without it.

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114. Collective bargaining legislation is not about unions as organizations, or about property, or about internal union affairs. It is not about the perquisites of union office, or about "union democracy" (see *Re CSAO National Inc. and Oakville Trafalgar Memorial Hospital Association*, [1972] 2 O.R. 498, 26 D.L.R. (3d) 63), or even Canadian Autonomy. The legislation defines and regulates a *statutory collective bargaining agency* relationship between employers and unions, but governing the employees' conditions of employment. That statutory relationship is as foreign to the common-law notions of "agency", and the "club law" of *Astgen v. Smith*, [1970] 1 O.R. 129, as it is possible to be.

115. It is worth a brief digression to explain something of the statutory framework; because unless one understands how the Statute is supposed to operate, one cannot appreciate the dimensions of the problem now before us. A statutory review will also demonstrate why the Board must try to do what it can to resolve the situation in such manner that the statutory process can begin to function again.

**Why a single, stable, exclusive union bargaining agent is fundamental to the statutory scheme**

116. A trade union is, under the Statute, an organization of employees formed for purposes that include collective bargaining (whatever else it may be at common law). A trade union is not a club - or "just" a club - nor is it even a "voluntary" organization. It is an entity which has a legal existence lacking at common law, and engages in a process - collective bargaining - which had no common-law foundation. The result of that process - the collective agreement - likewise has no common-law existence; but it is enforceable by Statute, and that same Statute allows it to contain provisions compelling union membership. A trade union is an instrument, constructed by employees for their mutual protection and advancement. But it is also the beneficiary of legislative protection, and intended to fulfil a statutory purpose.

117. A trade union acquires statutory "bargaining rights", through a certification process that depends upon establishing the support of a majority of employees in a bargaining unit defined by the Labour Relations Board. Once certified, the union is obliged to represent those employees, whether or not they are union members (section 69 of the Act), and it is required to negotiate with their employer, in good faith, with a view to concluding a collective agreement.

118. The collective agreement is a statutory creature with some important statutory characteristics. Among these is a permitted dues deduction provision, available at the request of a union bargaining agent (see section 44 of the Act). In effect, the Statute gives the union the power to "tax" employees, whether or not they are union members, so that the union will have the funds to fulfil its statutory duty of fair representation (see section 69 which extends to employees whether or not they are members). The authority to deduct money from wages earned by employees - a kind of "wage assignment" - is an enforceable provision of the collective agreement through the grievance-arbitration process prescribed in that agreement, and under section 45 of the Act. The right to deduct dues from employee wages is rooted in the Statute, not the union's Constitution (which may prescribe the *level* of dues). The union collects money from employees not because the Constitution requires it, but rather because the union is the statutory bargaining agent entitled to the benefit of section 44, and subject to the representation obligations of section 69. The payment of dues by employees is not an "internal union matter" (see also sections 47 and 48 of the Act).

119. "Bargaining rights" are a right to represent employees in the manner and for the purposes prescribed in the Statute. They are a legal, statutory, agency relationship, between a union and a generic grouping of employees (who may or may not all be "members"). Bargaining rights are not a piece of property "owned" by the union, and therefore disposable like some piece of furniture. Bargaining rights depend upon the Statute and can be acquired, lost or transferred only in accordance with the Statute - which is to say, in accordance with processes supervised by the Labour Relations Board.

120. The union's legal status as employee bargaining agent does not depend upon the continued employment of its original supporters at the time of certification, or even the continuing support of employees in the bargaining unit (see the comments of Laskin, C.J.C. in *Terra Nova Motor Inn*, 74 CLLC ¶14,253). The agency relationship exists in respect of those employees unless terminated in accordance with the Act - a process that again involves the testing of employee wishes. But bargaining rights cannot be challenged at any time, nor is the union's bargaining agency impaired if, from time to time, it loses the support of some or all of the employees in the bargaining unit (any more than a government loses its authority if public opinion polls establish that it has lost citizen support).

121. Bargaining rights can only be challenged during the limited "open periods" prescribed by Statute - essentially the last two months of any existing collective agreement, or such longer

period as may occur until a conciliation officer is appointed (see section 62 of the Act). At other times, the union is the statutory bargaining agent, whether or not it actually enjoys the support of a current majority.

122. The Legislature has struck a balance of employer, union, and employee interests. The status of bargaining agent rests ultimately on the will of the majority. However, the Statute also recognizes that the values of certainty, stability and employee choice may conflict to some extent. Accordingly, the law prescribes when such employee choice may be voiced. At other times, the union is the exclusive bargaining agent for the employees in the bargaining unit and must be so regarded by the employer.

123. The principle of *exclusivity* is fundamental to the scheme of the Act. Section 68 provides:

68.-(1) No employer, employers' organization or person acting on behalf of an employer or an employers' organization shall, so long as a trade union continues to be entitled to represent the employees in a bargaining unit, bargain with or enter into a collective agreement with any person or another trade union or a council of trade unions on behalf of or purporting, designed or intended to be binding upon the employees in the bargaining unit or any of them.

(2) No trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions shall, so long as another trade union continues to be entitled to represent the employees in a bargaining unit, bargain with or enter into a collective agreement with an employer or an employers' organization on behalf of or purporting, designed or intended to be binding upon the employees in the bargaining unit or any of them.

[emphasis added]

An employer is prohibited from dealing with employees individually, or with any other trade union that claims to represent them.

124. The same principle of exclusivity can be seen in the provisions of the Act dealing with collective agreements. Sections 42, 50 and 51 provide:

42.- (1) Every collective agreement shall be deemed to provide that the trade union that is a party thereto is recognized as the exclusive bargaining agent of the employees in the bargaining unit defined therein.

(2) Every collective agreement to which an accredited employers' organization is a party shall be deemed to provide that the accredited employers' organization is recognized as the exclusive bargaining agent of the employers in the unit of employers for whom the employers' organization has been accredited.

\* \* \*

50. There shall be only one collective agreement at a time between a trade union or council of trade unions and an employer or employers' organization with respect to the employees in the bargaining unit defined in the collective agreement.

\* \* \*

51. A collective agreement is, subject to and for the purposes of this Act, binding upon the employer and upon the trade union that is a party to the agreement whether or not the trade union is certified and upon the employees in the bargaining unit defined in the agreement.

The union is the exclusive representative of those employees and thus the custodian of any rights which they or it may have under the collective agreement.

125. The exclusive bargaining agent (by reason of its exclusivity) has a concomitant obligation of fair representation set out in section 69 of the Act:

69. A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, *whether or not members of the trade union* or of any constituent union of the council of trade unions, as the case may be.

[emphasis added]

The trade union is not just the bargaining agent for its members, nor does its bargaining agency rest on the union Constitution.

126. The union is the exclusive bargaining agent of the employees until the Board otherwise determines, and the employer must recognize that status and deal with no one else. The scheme of the Act envisages a simple symmetry: one (and only one) union; one collective agreement, and one bargaining unit.

127. The collective bargaining scheme and collective bargaining stability both require the identification of the exclusive bargaining agent. Without that identification and exclusivity, the collective bargaining process will not work - as this case demonstrates, and may be seen by a quick review of some of the provisions of the Statute.

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128. Section 15 of the Act requires the exclusive bargaining agent to negotiate a collective agreement on behalf of the employees in the bargaining unit, section 68 prohibits the employer from dealing with anyone else, and section 69 imposes upon the union a statutory duty of fair representation. Exclusivity is implicit in, and necessary for, the bilateral bargaining process.

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129. Under section 16 of the Act, the Minister is required to appoint a conciliation officer at the request of the bargaining parties. But when two unions both claim to be that union bargaining agent, the Minister cannot appoint, so the bargaining parties do not have this Ministerial assistance to conclude a collective agreement. Nor can employees in newly-certified bargaining units take advantage of the option of "first contract arbitration". There too, the Minister must respond to a request, which, in turn, raises the status of the union making that request. And, of course, conciliation is a condition precedent to a lawful strike. Without conciliation, employees lose both third-party assistance to achieve a collective agreement, and the right to collective action to press their claims.

\*

130. Section 45 requires the arbitration of disputes arising from the interpretation of collective agreements. But who triggers the arbitration process? Who selects the arbitrator and retains counsel? To whom does the Minister listen when asked to appoint an arbitrator as he may do, upon request, under section 45? Which organization owes the employees the statutory duty of fair representation in respect of the processing of such grievances or negotiations in general? Against whom does an unhappy employee file his/her complaint if there is an alleged breach of the duty of fair representation?

131. If there is a desire to terminate bargaining rights in a timely manner under section 58 of the Act, whom do the employees name in their application (not an academic question because

there is currently pending an application to terminate bargaining rights brought by employees of Hamilton Yellow Cab)? And, with whom does the employer negotiate the adjustment plan contemplated by section 41.1 of the Act if a portion of the business is to be closed and employees laid off? This latter question is not an academic one in the retail sector which is in the process of restructuring, and where store closings are not an unusual event.

132. We do not think it is necessary to multiply the examples. It is fundamental to the scheme of the Act that there be an identifiable, stable, and exclusive bargaining agent, protected from challenge except at prescribed times.

\* \* \*

133. The problem in this case is that there will be no exclusive bargaining agent for practical and statutory purposes until the 200 or so successor rights applications are litigated (one by one or in groups), or unless this Board makes some interim Order.

134. In the circumstances, we do not think that inaction is a viable option. Nor are we attracted to the form of interim Order issued in the *A & P* case. Those orders vested representation rights, for practical but limited purposes, in *persons* rather than *unions* - a solution which is inconsistent with the statutory scheme, which ultimately did not involve the exclusivity that was necessary, which was never intended to obtain for more than a few weeks, and which, in the end, simply did not work even for *A & P*. This solution kept in place the "union civil servants" who had customarily dealt with employee bargaining needs. But whatever its attraction in the short run, we do not think this formula is appropriate for the longer term or on the broader basis called for in the present proceedings.

135. We share the reservations of the earlier panels about interfering in internal union affairs. But with considerable reluctance, we have come to the conclusion that we must decide *which contender will be the interim exclusive bargaining agent*, for all statutory purposes, until the litigation before the Board is completed or otherwise resolved.

136. We do not welcome the "win/lose" character of such Order. Nor are we sanguine about the prospects of avoiding layers of litigation and the continuing collective bargaining disruption contingent upon inter-union rivalry. But as in a child custody case, we do not think that there is a compromise interim solution. We are not Solomon and we cannot divide the baby.

#### **The Statutory Basis for an Interim Order**

137. Section 92.1 was added to the Act in January 1993 and, on its face, gives the Board a new and independent power to "grant such interim orders, *including interim relief*, as it considers appropriate on such terms as the Board considers appropriate". That power is broad and undefined. There is nothing in the statutory language that suggests that the Board cannot make an interim Order (like an interim custody order or an interim injunction) which resembles the final order to which a party might be entitled at the end of the day; moreover, the breadth of the language suggests that the Board should bring its experience and labour relations judgement to bear upon the particular problem put before it. The Statute permits the Board to respond flexibly to the labour relations problems, to take a forensic approach, and to tailor the result to the particular mix of facts and the private and public interests at play. As the Board said in *Morrison Meats Ltd.*, [1993] OLRB Rep. Apr. 358: "An interim order represents, in part, an evaluation by the Board, in the face of a conflict, and in response to a request by one of the parties, as to the preferred labour relations circumstances to be preserved or created during the course of the litigation of the main application".

138. But the Board is not just the arbiter of particular disputes between particular parties. It also bears some responsibility for orderly collective bargaining in this Province, and has the specific responsibility to ensure, insofar as possible, that the objectives of the Statute are achieved (see section 2.1 of the Act). This, in turn, necessarily involves a balance of competing interests and collective bargaining concerns - whether those interests are articulated in the context of "the main application", or on an application for an "interim order including interim relief".

139. Section 92.1 is a relatively new section, with which the Board has had little experience. Certainly, no one has asked for the kind of Order sought by the applicant in this case. But the Board has given "interim relief" which has resembled the Order available "on the merits", and in so doing, it has taken into account policy concerns and "third party impact".

140. In unfair labour practice cases, the Board has recognized that the labour relations situation may demand intervention even though the applicant may not ultimately be successful in the "main proceeding", and even though the respondent may object to an order that appears to be a "win" for the other side. Thus, in cases such as *Loeb Highland*, [1993] OLRB Rep. May 197, or *Tate Andale* [to be reported October 1993], the Board was persuaded to grant interim reinstatement to employees who may or may not have been discharged illegally, because that reinstatement was necessary to protect the certification process and reassure employees that their choice for or against trade union representation would not expose them to employer reprisals. The Board noted that the right of self-organization mentioned in section 2.1(1) of the Act, could be impeded whether or not the employer ultimately prevailed in the underlying litigation.

141. In both *Loeb Highland* and *Tate Andale*, the Board noted that its approach to section 92.1 would not necessarily parallel that of a Court - anymore than its approach to strike-related cease-and-desist orders parallels that of a Court in picketing/injunction situations. The Board is a different kind of institution. It is animated by regulatory and policy considerations that are different from those of a Court (see generally *Tomko v. Nova Scotia Labour Relations Board, et al*, [1977] 1 S.C.R. 112, and *Re Tandy Electronics Ltd. & United Steelworkers of America* (1979) 26 O.R. (2d) 68). In *Tate Andale*, the Board put it this way:

39. In the first place, we might observe that the Board is not a court; and there is no reason to expect that either its adjudicative or remedial approach should mirror that of a court. Civil practice may sometimes provide a useful analogy, but when the Act so clearly involves policy considerations, so systematically modifies common-law premises, and so clearly excludes judicial involvement (see section 110), it would be curious for the Board to make common-law criteria a governing principle of interpretation. This is not to say that the Board's approach to dispute resolution will never resemble that of the courts; however, the criteria applied, and the result reached, are more likely to be based upon the scheme and purpose of the Act, the Board's own experience, and the norms and needs of the industrial relations community. (See generally: *Alex Tomko v. Labour Relations Board of Nova Scotia, et al* (1975) 76 CLLC ¶14005 (per Laskin, C.J.C.).)

See also: *Morrison Meats Ltd.*, *supra*, paragraphs 14-16.

142. That said, though, the Board has in fact looked at some of the things which would influence the Court on an application for interim relief. The Board has considered such factors as: the relationship between the interim Order sought and the final Order if the party seeking it were entirely successful; the desirability or possibility of preserving the status quo; the definition of the status quo in a dynamic system; whether the harm suffered by the party seeking interim relief is purely economic, and thus more readily ascertainable and recoverable after the merits have been decided; what the balance of harm may be - that is, whether the "harm" of not granting an Order exceeds the "harm" occasioned by granting the interim relief requested; and whether the "harm".

in this sense, extends to third party interests. To these the Board adds a policy component based upon its own experience of labour relations, its understanding of the statutory scheme, and whether there is a public interest element to be considered.

143. We might also note, parenthetically, that in each of the earlier interim Order applications, including this one, the panel has been composed of a union representative, an employer representative, and a "Vice-Chair" - the professional neutral. In that respect, the Board's composition mirrors the division of interest in the labour relations community. The "regulator" is structured to be representative of the groups regulated - a regulatory mechanism that is very different from that of a Court. The Board only departed from that model in File 1248-93-R because, in the Chair's opinion, it was absolutely imperative to address the "test case" as soon as possible (see section 104(12) of the Act).

\* \* \*

144. The UFCW (actually Retail, Wholesale and Department Store Union District Council of the United Food and Commercial Workers International Union) submits that this application for interim relief is untimely because some of the concerns mentioned by the applicant Steelworkers were evident in July, August and September. There is no merit to this submission. If anything, the Steelworkers union has taken a restrained approach, initially filing only one test case, rather than the 200 or so successor rights applications which it was later compelled to file. The Steelworkers hoped that the test case would sort things out between the contending parties. So did the Board. The delay is not inordinant, and, in any event, it cannot be said that the Steelworkers union was "sleeping on its rights".

145. Has the applicant made out an arguable case on the merits, and for the relief requested? In our view, it has. Given the material filed with the Board, the legal analysis in *A & P* (i.e., the test to be applied under section 63), and the result of that case, we think there is a real likelihood that the applicant will be successful as it was before. The issue, we repeat, is not merely what the union Constitutions provide, but rather whether the events, viewed as a whole, generate a successorship within the meaning of section 63 of the Act. We also note that even before the litigation of the *A & P* case before Chair McCormack, two entirely different panels of the Board concluded that there was a sufficient basis for interim Orders made at the request of the Steelworkers (although in neither case did that union get everything it requested).

146. This is not to say that in one or more of the other applications the situation is not arguably different, and perhaps different to such a degree as may warrant a different result. Those differences might suggest the desirability of a representation vote, even within the legal framework discussed in *A & P*, or because, in particular circumstances, that is the sensible labour relations result. But whether or not such differences are ultimately established, and whether or not they prove to be significant, we do not think that we can ignore the findings in *A & P* that:

- (1) bargaining rights rested with the Ontario local, not the Parent International based on practice and the International's own Constitution; and,
- (2) that the delegate convention of July 10-11 resulted in a merger with the Steelworkers, despite the American Parent's assertion to the contrary.

For as we have already noted, that proceeding involved the main protagonists that are before us now, and for whatever reason the American Parent (now part of the UFCW) chose not to call evi-

dence to rebut the facts asserted by Mr. Collins - many of which are repeated in his declaration before us, and many of which, it would appear, will be raised again in the context of the other successor rights applications. Nor can we ignore the fact that the delegate convention was considered in some detail in the *A & P* case, that those delegates were the same ones who rejected the UFCW merger the day before, and that they acted in concert and unanimously on July 11.

147. The situation may well be provably different for particular delegates or particular locals. But when constitutional correctness is not required by the Statute *for its purposes* (whatever might be the case for internal union matters), it remains to be seen whether Constitutional defects, if established, will prove to be determinative.

148. Without here dilating on the legal onus in interim applications, we think the *A & P* decision is now a significant feature of the legal and labour relations reality. It helps to define the "status quo" that we must consider preserving - recognizing, of course, that the collective bargaining system itself is, or should be, dynamic. Indeed, it is that dynamism which is being frustrated by the current situation.

149. What is the current collective bargaining reality; or, to put the matter another way, what collective bargaining conditions will continue if the Board does *not* make some interim Order? There is not much doubt about that. The collective bargaining paralysis will spread and the problems will escalate as more and more employers and bargaining relationships are drawn into the vortex. In the end, the dynamic process contemplated by the Statute will simply stop - as it already has in a number of the situations drawn to our attention.

150. In our view, this is not in the interests of the employers, the employees, or even the protagonists if they could but rise above their partisan interests. Certainly it is not consistent with the purposes of the Act or the conduct of labour relations in this Province. We find it difficult to resist the employers' plea (echoed by the Minister of Labour) to make some Order which will fix bargaining rights and obligations clearly, definitively, and in such manner that the parties can "get on with business" - even though it cannot be "business as usual" and may later be modified if the Board is persuaded in one or more successor rights applications to reach a conclusion different from that in *A & P*.

### Order

151. In our view, and in all the circumstances, the most appropriate interim Order is a declaration that the applicant Steelworkers Union (more specifically the Retail, Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America, Locals 414, 422, 440, 448, 461, 483, 488, 1000 and 1688) is the INTERIM exclusive bargaining agent for the employees affected by the 200 or so pending successor rights applications, and that, ON AN INTERIM BASIS, the Steelworkers' Union has all rights, privileges and duties under the Act of the predecessor RWDSU organization(s), however defined, and holds all of the rights, privileges and duties of the exclusive bargaining agent for this interim period. We so order and declare.

152. Lest there is any doubt about the Board's intention in making this interim Order: we intend that the Steelworkers union, for THIS INTERIM PERIOD (i.e., until the litigation is resolved and a final Order made), has and is entitled to exercise, *all* the rights and responsibilities which that union will assume, on a permanent basis, if it is successful in its successor rights claims. Conversely, we intend that the RWDSU, the American Parent, in whatever organizational manifestation, and the UFCW, shall have none of the rights, privileges or duties associated with the status of bargaining agent, in the INTERIM period, until the pending successor rights applications are disposed of.

153. It follows that the employers are entitled and required, for this interim period, to recognize the Steelworkers as the exclusive bargaining agent for all purposes, and must not recognize the UFCW, the American Parent, or any other union organization that does not establish its status as bargaining agent independently of the history or connection with the RWDSU.

154. It also follows that, during this interim period, the Minister of Labour may appoint conciliation officers, arbitrators, and so on, at the request of the Steelworkers, notwithstanding the opposition of any other organization.

155. We will outline this interim Order in more detail below.

### The Employee Concerns

156. We recognize that in making this interim Order, we have imposed an interim resolution that may not be the choice of some employees (we cannot say how many) and that we have done so without reference to the wishes of the employees as a whole. There is something to be said for the way Mr. Caley pointedly put it:

“It might come as a surprise to employees to wake up on July 12 and learn that representation rights had not only *not* flowed to the UFCW, but had passed to something called the “RWDSU Canada”, then on to the Steelworkers”.

However, when the delegates have unanimously rejected merger with the UFCW, employees might also be surprised to find themselves represented by strangers from the UFCW, or a trustee in New York, or perhaps some local fragment of the former RWDSU.

157. There is no perfect answer to these employee concerns. And, as we have already indicated, the employee wishes are not the only element in the equation, nor the only interest to be accommodated.

158. It is also important to note that the Statute provides a variety of safety valves to which employees can turn. Indeed, some of those options may be more readily available now that the choices are clarified.

159. In any of the pending successor rights applications, it is open to interested employees to intervene, as they have belatedly in the *A & P* case. Their representations or different facts may command a different result. It is open to them to argue that a vote is desirable, or will “clear the air”, or will avoid later litigation, or inter-union competition. It is open to them to assert that even if the Steelworkers have met the statutory prerequisites for a successorship, the Board should still seek the confirmatory evidence of a representation vote, because of the way in which the delegates were selected or acted - in short, that employees be consulted because there has not, in fact, been a reasonable opportunity to gauge their wishes.

160. However, quite apart from such intervention, employees always have the opportunity, during the open period of the collective agreement described above, to oust their existing bargaining agent and substitute another union - whether it be the UFCW or someone else. Likewise, employees always have the opportunity to reject collective bargaining altogether and return to a regime of individual bargaining. Nor is this a speculative exercise in this case, because a number of collective agreements are already “open”, or will come “open” in this sense in the coming months, so that if the UFCW has sufficient support to mount a raid, it will have the opportunity to do so - although, of course, it will have to actually establish membership support in the manner prescribed by the Statute. It will have to show that at least 35% of the workers want the UFCW to represent them.

161. It is important to emphasize that our interim Order does not remove or diminish any rights which employees might otherwise have to make a timely representation application in the manner prescribed by Statute. Nor in fact does the Chair's *A & P* decision. If the employees in the *A & P* bargaining unit are unhappy with the Steelworkers, they too can take action during the open period of whatever collective agreement the Steelworkers have "inherited". Again, if the UFCW can show that it appears to represent 35% of the employees, the Board could direct a representation vote.

162. In this sense, it really does not matter whether the bargaining agent is the UFCW, or the Steelworkers, or someone else. An unhappy majority always has the right to make a change during the last two months of a collective agreement, and a showing of 35% support can trigger a vote under section 9 of the Act. A successful successor can do no more than stand in the shoes of the predecessor organization, whether or not a vote has been directed under section 63(2). Conversely, even if a vote were taken under section 63(2) and the Steelworkers won, it appears that the UFCW could still make a timely raid and demand another vote.

163. The Board in *A & P* did not order a vote, in part because it was reluctant to turn a section 63 application into a mid-term "raid" or representation challenge. But it did not foreclose such challenge if otherwise timely. Whether the one kind of representation vote is preferable to the other, in *A & P* or generally, we need not decide. Our point is that if a significant number of employees support the UFCW, they are entitled to a timely vote as of right, not as a matter of discretion, and regardless of the success in the section 63 applications.

164. We think it is important to reiterate these undiminished employee rights, because counsel for the UFCW raised the spectre of the Steelworkers "imposing" a collective agreement upon an unwilling group of employees. That prospect, we think, is fairly remote.

165. In the first place, there is an extremely high probability that any proposed collective agreement would be subject to ratification by the employees bound by it. That is the practice of most trade unions and is likely to be followed here. Steelworkers counsel made no absolute undertaking, but he allowed that the likelihood of a ratification vote was "98%".

166. In all likelihood, employees will be asked to vote on any proposals that may become a collective agreement; moreover, ratification votes of this kind are regulated by section 74 of the Act. Section 74 requires appropriate notice to all employees in the bargaining unit whether or not they are union members. Section 74 also requires an "ample opportunity" for employees to cast their ballots in a secret ballot vote.

167. We think it is unlikely that the Steelworkers would "impose" a collective agreement upon an unwilling membership - particularly against the background of this case and the effect such decision might have on any outstanding successorship applications, as well as the "politics" of the situation. But *whether or not the union would have such inclination, it could only get to the position of negotiating a new collective agreement, after passing through and surviving the "open period" during which its status as bargaining agent could be challenged.* In other words, an unhappy employee majority would have the opportunity to oust the Steelworkers before that union could even consider "imposing" a collective agreement on anyone. To the extent that an employer may be concerned about employee wishes, it can always seek confirmation of those wishes through a "final offer vote" conducted pursuant to section 40(1) of the Act; and, of course, whatever the ultimate outcome of the successor rights proceedings, the actions of the interim bargaining agent will shape the legal and labour relations setting in which subsequent collective bargaining will occur. Even if the ultimate successor turns out to be different from the interim bargaining agent, the former will not be able to approach bargaining as if it were a clean slate.

168. Finally, we wish to make it clear that the statutory duty of fair representation (section 69 of the Act) is now firmly fixed on the Steelworkers Union, because of its status as interim exclusive bargaining agent. If individual employees have particular concerns about the quality of representation, it is as open to them to complain under section 69 as it was before - and again, the precise identification of the bargaining agent facilitates rather than hinders such complaints.

169. From a strictly labour relations perspective, we remain concerned about a general situation in which rival unions may reject reasonable compromise for fear that they will be labelled weak or indecisive or "in bed with the employers". That is sometimes the effect of inter-union competition, and it is a recipe for industrial conflict and discord. That is not a good labour relations result - particularly in an industry attempting to restructure and for unionized employers trying to confront non-union competition. But there is nothing that a regulatory body can do about that.

### **The Employee Benefit Funds**

170. To this point, we have only addressed the problems flowing from the inability to identify the exclusive bargaining agent - an identification which, for the reasons outlined, is critical to the scheme of collective bargaining regulated by the Act. We have not addressed the unions' role in respect of certain benefit funds which are maintained for the benefit of employees.

171. These funds (such as the Dental Plan) are "jointly trustee'd" and the "employee trustees" are normally drawn from, or nominated by, the union bargaining agent. The Steelworkers contend that it is inappropriate that the trustees, once nominated by RWDSU Ontario locals, are now being selected or replaced by nominees of the UFCW.

172. However, in our opinion, it is unnecessary to make any interim Order in respect of those trust funds.

173. The trustees, both individually and collectively, have a fiduciary responsibility in respect of the monies in question. There is no evidence whatsoever of any malfeasance or inappropriate behaviour on the part of the trustees. It is hardly likely that the *employer* trustees would permit union politics to deflect the trustees from the best interests of the employee beneficiaries. And if such allegations were to surface, they can be pursued in other forums or under the legislation regulating trust funds.

174. At this stage, we do not have to consider any interim Order in respect of those trust funds. There is no real impact on collective bargaining, and so far as we can tell, no adverse impact on employees.

### **The Application by the UFCW**

175. In view of our interim Order made in favour of the Steelworkers, we do not think it is necessary to make the interim Order requested by the respondent UFCW. The cross-application for interim relief is therefore dismissed. However, again, lest there be any uncertainty, we wish to make it clear that whatever may have been the case heretofore, and whatever may have flowed from the two interim Orders in the *A & P* case, Edward Jenner no longer has any right, in his personal capacity, to represent employees in collective bargaining matters, or to speak on behalf of the interim exclusive bargaining agent without the Steelworkers' consent and authorization. The interim exclusive bargaining agent is entitled to determine who its spokespersons will be. To the extent that Mr. Jenner may have rights as a union member, or as an employee, or perhaps former employee, he can pursue those rights at common law and in other forums. His rights under the

*Labour Relations Act* are no higher than that of any other employee (if, in fact, he continues to be an employee in one of the bargaining units to which a successor rights application relates).

### Summary

176. For all of the foregoing reasons, the Board declares that the applicant, "Steelworkers", is the interim exclusive bargaining agent for the employees in the bargaining units to which the pending successor rights applications relate, and that the applicant, on an interim basis, has all the rights, privileges, duties and responsibilities, under the Act, of exclusive bargaining agent.

177. The Board directs that the employer responding parties recognize and deal with the applicant Steelworkers exclusively, on a business-as-usual basis, for all purposes relating to the representation of employees, including, but not limited to, the day-to-day employee representation (grievances, arbitrations, etc.) and collective bargaining.

178. The Board further directs that the employer responding parties forthwith remit to the Steelworkers any dues now held in trust and any dues which are or will be required under the relevant collective agreements.

179. The Board directs that the Retail, Wholesale Department Store Union, AFL-CIO-CLC and/or the RWDSU District Council of the United Food and Commercial Workers International Union, and/or the United Food and Commercial Workers International Union, and/or any of the subordinate or affiliate bodies of these unions, and anyone acting on their behalf to cease and desist from any communications or conduct with the employer responding parties, or anyone else, inconsistent with this interim Order. However, this direction does not foreclose these unions from communicating their positions with respect to the legal or factual issues raised in the successor rights proceedings considered to date or to be considered in the future. But for the interim period, these unions do not have any right of access provided for the exclusive bargaining agent under any collective agreement.

180. Nothing in this interim Order is intended to suspend or interfere with any other rights which employees may have individually or as a group in respect of their bargaining agent.

181. The Board hereby advises the Minister of Labour that he may process any applications which have been or may be made under the *Labour Relations Act* by the Steelworkers, the union which we have declared to be the interim exclusive bargaining agent for employees in the bargaining units that are subject to the above-mentioned successor rights applications. The Minister may appoint arbitrators and conciliation officers with respect to the employer responding parties, notwithstanding any assertion made by any other trade union, its subordinate bodies or affiliates, or anyone else acting on their behalf. The Minister is entitled, until the Board otherwise declares, to treat the applicant Steelworkers as the exclusive bargaining agent for the employees in question, with all rights, privileges and duties associated with that status.

### Notice and Information

182. The Board recognizes that its decision in this matter will not only affect the collective bargaining situation of thousands of employees, but will be of interest to many of those employees. Undoubtedly, what some will view as "rough justice", others will consider to be "manifestly unjust". It is also evident that the flow of information to employees is currently being channelled and filtered by political partisans. It is inevitable that they will put their own "slant" or "spin" to any explanation of the relations between them or the litigation before the Board. Accordingly, the Board directs that the employers post the Notice attached to this decision and labelled "Appendix

A" in prominent places on the employers' premises where they will come to the attention of the employees affected by these proceedings. In addition, two copies of the Board's decisions, collected together, must be posted on each bulletin board where notices to employees are customarily posted.

### **Concluding Comment**

183. For the reasons already outlined, we have found this to be a very difficult case. We have made an interim Order only because the parties were unable to resolve the dispute between themselves and the alternative was collective bargaining gridlock. We have declared an interim exclusive bargaining agent only because we think the Statute requires one, and the Board was forced to choose. As the Board indicated at the hearing, it is most unfortunate that this inter-union dispute could not be resolved within the "House of Labour".

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**APPENDIX "A"**

**THE LABOUR RELATIONS ACT**

**NOTICE TO EMPLOYEES**

**POSTED BY ORDER OF THE ONTARIO LABOUR RELATIONS BOARD**

Until the Summer of 1993, thousands of employees in Southern Ontario were members of the Retail, Wholesale and Department Store International Union and one or other of its Ontario local unions (e.g., Local 414). These employees were represented for collective bargaining purposes by the RWDSU organization.

There is now a dispute about whether those bargaining rights were held by the Parent International Union, or by the individual local unions in Ontario.

There is also a dispute about whether those bargaining rights have passed by way of merger to the United Food and Commercial Workers International Union or one of its affiliates, or, in the alternative, to the United Steelworkers of America and one of its affiliates.

Both the Steelworkers and the UFCW claim to have inherited those bargaining rights.

The international and local officers of the RWDSU disagree with each other about whether those bargaining rights have been transferred, to whom they have been transferred, and what is in the best interests of the membership.

In particular, the UFCW, the Steelworkers, and the RWDSU officials disagree about the effect of a delegate convention held in Toronto on July 10-11, 1993 where the delegates rejected merger with the UFCW and purported to join the Steelworkers Union instead.

As a result of these disputes, more than 200 applications have been filed with the Labour Relations Board. In each of these applications, the Board is asked to decide which union now represents a group of employees who were once members of a local of the RWDSU.

It is not clear whether these applications will have to be dealt with, one by one, or handled in groups. Nor is it clear how long that hearing process will take. There is a real possibility that it could take months. In the meantime, there is considerable confusion about which union represents the employees.

As a result of this dispute, the process of collective bargaining is being impeded, because employers do not know which union to deal with. The day-to-day administration of the collective agreement is also being frustrated.

The employers stress the importance of being able to carry on business as usual, so that this dispute between the trade unions does not interfere with the interests of the employers or the employees.

The union parties agree that uncertainty is undesirable; but the union parties are unable to agree among themselves on any interim arrangement.

\* \* \*

- 2 -

In August 1993, the Board held a hearing involving RWDSU Local 414, the largest local in Southern Ontario, and the A & P bargaining unit, which with 5,000 members is the largest bargaining unit of Local 414. It was hoped that this would be a test case which would help the unions resolve their dispute. The Board received the evidence and representations of the International RWDSU (now merged with the UFCW) and the Ontario local union group that claims that it has merged with the Steelworkers.

On September 23, 1993, the Board found that Local 414 held the bargaining rights for the A & P employees - not the Parent International, and that Local 414 had successfully merged with the Steelworkers.

The Board also found that, as a result of the delegate convention in Toronto on July 10-11, 1993, Local 414 took its bargaining rights with it into the Steelworkers' organization.

Despite that finding, there is still continuing confusion and continuing challenges to the purported merger with the Steelworkers, and continuing debate about the bargaining rights of employees who may have been members of the various local unions named in this application.

These questions can only be resolved after further hearings before the Board, but in view of the magnitude of the dispute, those proceedings cannot be completed for weeks or perhaps months.

In the meantime, it is imperative that an interim bargaining agent be specified so that the collective bargaining process can proceed, and employees will have a clearly-designated union to represent them.

\* \* \*

On November 23 and November 24, 1993, the Board held a hearing in Toronto to consider whether some interim arrangement should be put in place, and, if so, what that arrangement should be. The various unions and employers were present at that hearing and represented by lawyers. Those lawyers made submissions about what interim arrangement might be appropriate.

After considering those representations, the Board decided that the Retail, Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America, Locals 414, 422, 440, 448, 461, 483, 488, 1000 and 1688 should be declared to be the interim exclusive bargaining agent(s) for the employees who were once members of the RWDSU locals in Southern Ontario.

That declaration will permit most of the local officials who have represented employees in the past to continue to do so. It will identify who the employers must deal with for collective bargaining purposes, until the Board otherwise declares. It will also clearly identify the interim bargaining agent in case the employees are unhappy with the Steelworkers or its performance in the short term.

The Board's reasons for making this decision are set out in a long decision which is posted on the employee bulletin board along with this Notice.

The Board's earlier decisions concerning this dispute (dated July 29, August 12, September 2, and September 23) are also posted.

In making this decision, the Board's concern is to preserve orderly labour relations until the disputes between the trade unions can be finally resolved.

- 3 -

This interim Order is not intended to affect any other rights which employees may have under the Labour Relations Act. In this regard, employees are encouraged to read the Board's various decisions which review the background and explain the reasons for the conclusions the Board has reached.

The Board has directed that this Notice be posted and that these decisions be made available, so that the employees will be informed about these proceedings before the Board.

**THIS IS AN OFFICIAL NOTICE OF THE BOARD  
AND MUST NOT BE REMOVED OR DEFACED**

**THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE WORKING DAYS**

DATED this 17th day of December, 1993.

**1788-92-G Sheet Metal Workers' International Association, Local 473, Applicant v. The Electrical Power Systems Construction Association, Bruce Nuclear Power Development, Responding Party**

**Construction Industry - Construction Industry Grievance - Damages - Jurisdictional Dispute - Remedies - Board earlier deciding jurisdictional dispute in favour of Sheet Metal Workers' union - Union seeking compensatory damages through grievance and arbitration under section 126 of the Act - Board determining that collective agreement precluding it from awarding damages in this case involving first time error in assigning work where mark-up meeting had been held - Work not falling within "same employer and same work" exception in collective agreement - Board finding that no damages owed**

**BEFORE:** *Louisa M. Davie*, Vice-Chair, and Board Members *J. A. Rundle* and *H. Peacock*.

**APPEARANCES:** *J. Raso* and *Gord Stewart* for the applicant; *M. Patrick Moran*, *Neil Donnelly* and *Barry Roberts* for the responding parties.

**DECISION OF THE BOARD;** December 16, 1993

1. Pursuant to section 126 of the *Labour Relations Act* ("the Act") the applicant ("the trade union" or "Sheet Metal Workers") has referred a grievance concerning the interpretation, application, administration or alleged violation of a collective agreement to the Board for final and binding determination.
2. The facts giving rise to this grievance are not in dispute. In July 1992 a mark-up meeting was held by the responding parties ("the employer" or "EPSCA") with respect to certain work to be performed at the Bruce Nuclear Power Development. At that mark-up meeting work in connection with the removal for scrap of exterior metal siding from the roof of the Bruce Nuclear Power Development's Steambridge - Reactor and Turbine Buildings ("the work in dispute") was assigned to members of the Labourers International Union of North America Local 1059 ("the Labourers").
3. The Sheet Metal Workers' asserted that the work had been misassigned and should properly have been assigned to members of the Sheet Metal Workers Union. A grievance was filed in which the following relief was claimed:

RELIEF SOUGHT:

1. An Order that the Employer is bound by the Collective Agreement.
2. A Declaration that the Employer has violated the Collective Agreement as hereinbefore set forth.
3. An Order that the Employer apply the full terms and conditions of the Collective Agreement at all projects which may now or hereafter be engaged in, and without limiting the generality of the foregoing, and Order that the Employer employ and continue to employ only members in good standing of the Union in accordance with the Collective Agreement and in particular Articles 2 and 9.
4. Damages against the Employer by reason of the aforementioned violation of the Collective Agreement, including interest.
5. Such further and other relief as may be appropriate in the circumstances.

4. That grievance was referred to the Board on September 21, 1992. The grievance however was adjourned *sine die* pending the adjudication by the Board of a jurisdictional dispute which had been filed by the Sheet Metal Workers' with respect to the work in dispute which had been assigned to the Labourers. It is not disputed that in response to the grievance the employer asserted that the work in dispute did not fall within the jurisdiction of the Sheet Metal Workers' union and had been properly assigned to the Labourers' union.

5. By decision of the Board dated March 8, 1993, the panel of the Board hearing the jurisdictional dispute complaint found in favour of the position of the Sheet Metal Workers. The Board declared that the work in dispute "should have been assigned to members of the applicant Ontario Sheet Metal Workers' and Roofers' Conference and its affiliate Sheet Metal Workers' International Association, Local 473" and ordered "all such future work in Board Area #3 assigned by Ontario Hydro or the Electrical Power Systems Construction Association be assigned to members of the Ontario Sheet Metal Workers' and Roofers' Conference and Sheet Metal Workers' International Association, Local 473".

6. Counsel for the Sheet Metal Workers' asserts that when the issue of the trade union's entitlement to perform the work in dispute had been established, the trade union requested that this grievance be relisted for hearing. Before this panel the trade union seeks a declaration and compensatory damages flowing from the employer's violation of the collective agreement.

7. Counsel for the employer asserts that the provisions of the collective agreement do not permit the Board to award damages in the circumstances of this case. The relevant provisions of the collective agreement are as follows:

- 8.2 Regular mark-up meetings will be conducted for each project and for transmission and transformation construction at times appropriate for the work in progress. The purpose of these mark-up meetings is to indicate to the Unions the work which is about to be carried out by the Employers in order to minimize the potential for jurisdictional disputes.

EPSCA will provide written notice to the Union as far in advance as possible of mark-up meetings.

The Union will attend these mark-up meetings, and every effort will be made to settle questions of jurisdiction before the dates that management indicates the work is expected to commence.

- 8.3 The Employer who has the responsibility for the installation shall make a proposed assignment of the work involved. The Employer will specify a time limit for the Unions involved to submit evidence of their claims. The Employer will evaluate all evidence submitted as per Article 8.1 and make a final assignment of the work involved. The Employer will advise the union of the final assignment prior to work commencing. A copy of such assignments shall be submitted to the Business Manager of the Ontario Sheet Metal Workers' Conference.

- 8.4 When a jurisdictional dispute exists between unions, and upon request by the Union, the Employer shall furnish the Business Manager of the Ontario Sheet Metal Workers' Conference with a signed letter from a duly authorized official of the company on Employer stationery [sic], stating whether or not the Union was employed on specific types of work on a given project. The Employer shall supply the Business Manager of the Ontario Sheet Metal Workers' Conference with a copy of the evidence submitted by the other union(s) involved along with drawings and/or prints plus a description of the work or process in dispute when requested.

- 8.5 In the event that a jurisdictional dispute cannot be settled on a local basis by the Unions involved, it shall be submitted to the Unions involved for settlement without

permitting it to interfere in any way with the progress of the work at any time. In the event the dispute is not settled by the Unions involved, EPSCA and/or the Union may then submit the dispute to the Ontario Labour Relations Board under the *Labour Relations Act*. EPSCA and the Ontario Sheet Metal Workers conference will advise each other in writing of their intent to submit a jurisdictional dispute to the Ontario Labour Relations Board and will identify in detail the work in question. The decision of the Ontario Labour Relations Board with respect to the jurisdictional dispute will be final and binding on the parties to this Agreement. The Ontario Labour Relations Board will determine the jurisdictional dispute before it pursuant to its normal criteria.

- 8.6 In the event the Union pursues or responds to a jurisdictional dispute at the Ontario Labour Relations Board the hearings panel appointed by the Ontario Labour Relations Board pursuant to the Act is not authorized to award damages in respect of a misassignment of work, only in circumstances where the other union(s) involved in the proceedings is (are) equally restricted in their ability to claim for damages. However, this paragraph 8.6 shall not apply where the jurisdictional dispute and the misassignment of work involves the same employer and the same work previously the subject matter of a jurisdictional dispute, relating to a construction project covered by this Agreement or its predecessors, before the Ontario Labour Relations Board.

8. Counsel for the employer submits that Article 8 is a complete code which governs the parties in these circumstances. He asserts that the intent of Article 8 is clear. In exchange for a provision requiring the employer to hold regular mark-up meetings, the trade union agreed to forego damages the first time the employer errs in assigning work. As counsel put it, Article 8.6 "gives the employer the right to be wrong the first time without suffering damages as long as the employer holds the mark-up meeting".

9. Counsel for the employer urged the panel to consider the provisions of Article 8 in their entirety. He argued that the parties had agreed upon a complete process which was to be followed in all cases of assignments and misassignments of work. Pursuant to Article 8 that process requires the employer to hold mark-up meetings and assign the work. If there is a misassignment of work a jurisdictional dispute can be filed. The decision of the Board with respect to the assignment is to be final and binding. That decision ends the matter including any issue of damages which may flow from the original assignment *unless* the union can bring itself within the exceptions set out in Article 8.6 that:

- (a) The other union party to the jurisdictional dispute was not equally restricted from claiming damages; or
- (b) The issues with respect to the jurisdictional dispute and the misassignment of work involved the same employer and the same work previously the subject matter of a jurisdictional dispute.

10. In this instance there is no dispute that the collective agreement between EPSCA and the Labourers contains a provision substantially similar to Article 8.6 and precludes the Labourers from claiming damages in these circumstances. Counsel for the employer maintained that this work also had *not* been the subject of jurisdictional dispute involving the employer and as a result the latter exception set out in Article 8.6 does not apply.

11. Counsel for the trade union argued that Article 8.6 was clear and unambiguous and on a plain and ordinary reading precludes only the panel hearing the jurisdictional dispute from awarding damages. As this panel is not the panel hearing the jurisdictional dispute but rather the panel hearing the grievance, Article 8.6 does not apply. Counsel noted that there was a clear distinction between a panel of the Ontario Labour Relations Board sitting as a hearings panel to adjudicate

upon a jurisdictional dispute complaint, and an arbitration panel which hears a grievance which may have given rise to the jurisdictional dispute. He submitted that if the parties had intended to restrict the arbitration panel hearing the grievance from awarding damages they could have done so in much clearer language.

12. In the alternative counsel for the Sheet Metal Workers' asserted that even if Article 8.6 does preclude the trade union from seeking damages in a grievance which gives rise to a jurisdictional dispute, the present circumstances fall within the exception set out in Article 8.6 because the grievance involves the same employer and the same work previously the subject matter of a jurisdictional dispute. Counsel referred to the decision of the Board in *Electrical Power Systems Construction Association*, [1991] OLRB Rep. Feb. 185 where the Board found the installation of sheet metal siding to be the work of the Sheet Metal Workers' union.

13. Neither party adduced any extrinsic evidence of either past practice or negotiating history to assist in the interpretation of Article 8.6. Notwithstanding their different interpretations about the intent of the parties in negotiating Article 8.6, both counsel argued that the intent of the parties as reflected in the language chosen in the collective agreement was clear.

14. In our view the language used by the parties is not particularly clear. In the absence of any extrinsic evidence however we must interpret the intent of the parties from the language which they have chosen. In so doing we find we can take some notice of the fact that it is not the usual practice of the Ontario Labour Relations Board to award damages when dealing with a jurisdictional dispute complaint. If damages are awarded because of an erroneous assignment of work that issue is normally or typically left to be dealt with by the panel hearing the grievance which gave rise to the jurisdictional dispute complaint i.e. the grievance that work was improperly assigned to persons who were not members of the trade union filing the complaint.

15. We have determined that read in its entirety, Article 8, and in particular Article 8.6, precludes this Board from awarding damages in the circumstances of this case. We have made this determination for two reasons. First, the interpretation urged upon us by counsel for the trade union that the reference in Article 8.6 to the "hearings panel" refers to the panel hearing the jurisdictional dispute complaint would render the language of the collective agreement largely superfluous given the practice and jurisprudence of this Board *not* to award damages when dealing with jurisdictional complaints. Both EPSCA and the Sheet Metal Workers' are sophisticated parties within the labour relations community. Both regularly appear before the Board in a number of different types of cases including jurisdictional dispute complaints and grievances. In these circumstances it is not unreasonable to assume that the parties were aware of the Board's practice of not awarding damages in jurisdictional disputes. It would therefore be unnecessary for these parties to incorporate into their collective agreement language which prohibits only the panel hearing the jurisdictional dispute complaint from awarding damages. If their intent had been to do that the parties could simply have said "the hearings panel appointed to hear the jurisdictional dispute complaint is not authorized to award damages".

16. Secondly, and as a corollary to this, the language used supports our view that the parties did not intend to prohibit *only* the panel hearing the jurisdictional dispute from awarding damages. As noted, if that had been the intent the parties would simply have said "the hearing panel hearing the jurisdictional dispute complaint" and not "the hearing panel appointed by the Ontario Labour Relations Board pursuant to the Act". The latter phrase is not only more cumbersome but encompasses any hearings panel appointed by the Board pursuant to the statutory scheme of the Act to deal with issues arising out of a jurisdictional dispute *or* a misassignment of work. In this regard we

consider it important that the parties themselves have drawn a distinction between a "jurisdictional dispute" and "the misassignment of work".

17. Both sentences in Article 8.6 refer to both "jurisdictional dispute" and "misassignment of work" while each of the previous references in Article is only to a "jurisdictional dispute". The parties themselves have drawn a distinction between the two types of matters. The first being a jurisdictional dispute involving competing unions. The latter being a dispute between an employer and a union about the assignment of work pursuant to the terms of the actual collective agreement. The difference in terminology is made clear in the last sentence of Article 8.6 which states the Article shall not apply where the "jurisdictional dispute *and* the misassignment of work" involves the same employer and the same work.

18. The intent of the parties as evidenced by the language they have used is to prohibit the hearings panel which deals with either the jurisdictional dispute or the misassignment of work from awarding damages. In adjudicating upon this grievance this "hearings panel" is being asked "to award damages in respect of a misassignment of work" in circumstances where the Sheet Metal Workers pursued, or responded to, a jurisdictional dispute at the Ontario Labour Relations Board. Article 8.6 states this "hearings panel" cannot do so unless certain conditions apply.

19. Having concluded that we are not authorized to award damages unless the circumstances before us fall within one of the exceptions set out in Article 8.6 we turn to the Sheet Metal Workers' alternative argument. Did this misassignment of work involve the same employer and the same work previously the subject matter of a jurisdictional dispute before the Ontario Labour Relations Board? We find that it did not.

20. A review of the decision in *Electrical Power Systems Construction Association, supra* ("the 1991 decision") indicates that the work in dispute which was the subject matter of that jurisdictional dispute was the installation of external sheet metal siding, the installation of interior sheet metal siding and the installation of metal cap screws to fasten such sheet metal to the temporary change facility at Bruce Nuclear Power Development. As indicated the work in dispute which is the subject matter of the jurisdictional dispute complaint which followed the filing of this grievance about the misassignment of work was work in connection with the removal for scrap of exterior metal siding. The work of *installing* sheet metal siding and the work of *removal for scrap* of metal siding are different.

21. We do not accept counsel's submissions that the Board in its 1991 decision found that all work in connection with sheet metal siding "belongs" to the Sheet Metal Workers. Neither do we accept that the basis for the decision of the Board regarding the "removal for scrap of metal siding" was based on an assessment as to which trade initially installed the metal siding and that therefore the Board's earlier ruling with respect to the installation of siding falls within the "same employer and the same work" exception set out in Article 8.6.

22. A review of the Board's decision dated March 8, 1993 indicates that the Board found Ontario Hydro's own policy applied to the jurisdictional dispute complaint before it. As a result the work of the removal for scrap of exterior metal siding should have been assigned to the sheet metal workers pursuant to Hydro's own policy. Applying that policy, together with the evidence of past practice, led the Board to conclude the jurisdictional dispute complaint in favour of the Sheet Metal Workers. The Board did not do so however because members of the Sheet Metal Workers installed the metal siding or because all work associated with metal siding "belongs" to the Sheet Metal Workers.

23. That the Board hearing the jurisdictional dispute itself drew a distinction and noted the

difference between the "installation" of sheet metal siding and the "removal for scrap" of sheet metal siding is evident from its comments at paragraph 18 of that decision wherein the Board notes:

"Because this was a "removal from scrap" assignment, we find the "removal and replace" and "installation" assignments materials of no real assistance".

We would note parenthetically that within the construction industry it is not uncommon for the parties (construction trade unions and employers alike) to distinguish between installation and removal with the result that there may be different assignments to different trades depending on such factors as whether the installed items serve a single purpose or a multi purpose, or whether the removal is for repair and re-use, re-use on site, scrap or salvage etc.

24. We therefore find that the work which formed the basis for the jurisdictional dispute complaint which followed the filing of this grievance, (the work which was "misassigned" as that term is found in Article 8.6) is not work which falls within the "same employer and same work" exception set out in Article 8.6. This is the first misassignment of work in connection with the removal for scrap of exterior metal siding.

25. Before this panel the employer did not dispute that its assignment of the work to the Labourers was a violation of its collective agreement obligations with the Sheet Metal Workers. We therefore declare that the employer violated the collective agreement when it failed to assign members of the Sheet Metal Workers union to perform work in connection with the removal for scrap of exterior metal siding to the first drop point. Having regard to the provisions of the collective agreement however we find that no damages are owed as a result of this first misassignment of work.

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**1672-93-JD** Ironworkers' District Council of Ontario and the International Association of Bridge, Structural and Ornamental Ironworkers, Local 700, Applicant v. **The State Group Limited**, State Contractors Inc., Millwrights District Council of Ontario, Millwrights Local 1244, United Brotherhood of Carpenters and Joiners of America, Ontario Erectors Association Incorporated, Association of Millwrighting Contractors of Ontario, Responding Parties

Construction Industry - Jurisdictional Dispute - Ironworkers' union and Millwrights' union disputing assignment of work in connection with material handling systems - Board satisfied that work in dispute should be assigned to composite crew, consisting of equal members of Ironworkers and Millwrights performing the work functions interchangeably - Board emphasizing that its decision not intended to apply to all "in-plant" construction work

**BEFORE:** *Louisa M. Davie*, Vice-Chair, and Board Members *D. A. MacDonald* and *J. Redshaw*.

**APPEARANCES:** *S.B.D. Wahl*, *G. Michaluk* and *F. Marr* for the applicant; *N. L. Jesin* and *H. Martinak* for Millwrights Local 1244; no one appearing for responding party The State Group Limited; no one appearing for the other responding parties.

**DECISION OF THE BOARD;** December 16, 1993

1. This is an jurisdictional dispute complaint filed on August 24, 1993 pursuant to the recently amended section 93 of the *Labour Relations Act* ("the Act").

2. On December 15, 1993 the Board held a consultation with the parties. At that time only representatives of the applicant trade union ("the Ironworkers Local 700") and representatives of the responding party trade union ("the Millwrights Local 1244") were in attendance. None of the other responding parties had filed any material with the Board as required by sections 72 to 76 of the Board's Rules of Procedure. None of the other responding parties attended the consultation although each party was properly served with notice of the date, time, place and purpose of the consultation. In the circumstances the Board proceeded and conducted the consultation pursuant to sections 93 (1.1) and 93 (1.2) of the Act in the absence of the other named responding parties.

3. As required by the Board's Rules of Procedure, counsel for the Ironworkers Local 700 and counsel for the Millwrights Local 1244 had filed extensive written material with the Board prior to the commencement of the consultation. In addition both counsel made extensive oral submissions to the Board at the consultation on December 15, 1993. Having regard to the material filed and the submissions of the parties we find that we are able to decide this complaint without requiring the parties to present oral evidence.

4. We find that the work in dispute cannot properly be described as either a "conveyor system" or a "production or processing equipment". Rather, and without itemizing in detail the various components of the system we are satisfied that the work in dispute is a completely integrated material handling *system*. The system includes both production equipment and machinery and equipment or machinery which conveys or moves the product through the production process but is generally described as a "material handling system."

5. On balance, and having particular regard to the prevailing area practice and the decision of the Board in *Comstock Canada*, [1993] OLRB Rep. Aug. 740 we are satisfied that the correct assignment of the work in dispute is to a composite crew, consisting of equal numbers of Ironworkers and Millwrights performing the work functions in question interchangeably. This has been the general practice in Board Area #1 and is the more practical and reasonable assignment in all of the circumstances.

6. In the circumstances we order and direct that:

all construction work in connection with the installation, erection, dismantling, alteration, relocation, and repair of material handling systems inclusive of all types of conveyor systems, machinery and/or equipment including the off loading, rigging, handling, placement, alignment, leveling, securing, adjusting and repairing thereof at the D.N.N. Hot Dip Galvanizing Line #1, Windsor, Ontario should be assigned to a crew consisting of equal number of members of Ironworkers, Local 700 and Millwrights Local 1244 performing all work functions interchangeably.

7. We have further determined and direct that our order with respect to the assignment of this work in relation to a material handling system is to be binding upon all the parties named in the complaint including the employer contractor who assigned the work and the two employer organizations named in the application. Further, pursuant to section 93 (2) of the Act, our order is binding as well upon all other future jobs undertaken in Board Area #1. Our order applies to assignments made by contractors who are bound to both the Ironworkers Provincial Agreement and the Millwrights Provincial Agreement. (See, *Comstock*, *supra* and the reasons set out therein as they relate to the scope of the order.)

8. Notwithstanding the requests made by the Ironworkers Local 700 and the Millwrights Local 1244 we do not consider it necessary or appropriate to make any other orders or directions in the circumstances of this case.

9. In light of the submissions of the parties we wish to emphasize that our decision is *not* intended to apply to *all* “in-plant” construction work. This decision does not stand for the proposition that all “in-plant” construction work should be performed by a composite crew consisting of equal numbers of members of Ironworkers Local 700 and Millwrights Local 1244 performing all work functions interchangeably. For example, and in particular, we note that the work in dispute before us does not involve stand alone machinery or equipment. The work in dispute involved machinery and equipment which was an integral part and component of the material handling system. It is such a system, including its machinery and equipment which is the subject matter of our orders and directions.







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## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING NOVEMBER 1993

### APPLICATIONS FOR CERTIFICATION

#### Bargaining Agents Certified Without Vote

**0185-93-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. General Signal Limited (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of General Signal Limited working at or out of the City of Mississauga, in its service division of its Edwards unit, save and except supervisors, persons above the rank of supervisor, and office and sales staff" (46 employees in unit) (*Clarity Note*)

**0516-93-R:** United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Stave Construction (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Stave Construction in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Stave Construction in all sectors of the construction industry in the Regional Municipality of Ottawa-Carleton, and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**1238-93-R:** Amalgamated Clothing & Textile Workers Union (Applicant) v. Royal Shirt Company Limited (Respondent)

Unit: "all employees of Royal Shirt Company Limited in the City of Vaughan, save and except supervisor, persons above the rank of supervisor, office and sales staff" (54 employees in unit)

**1264-93-R:** Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Applicant) v. Regal Constellation Management Limited c.o.b. Regal Constellation Hotel (Respondent) v. Group of Employees (Objectors)

Unit: "all security guards employed by Regal Constellation Management Limited at the Regal Constellation Hotel, 900 Dixon Road in the Municipality of Metropolitan Toronto, save and except supervisors and persons above the rank of supervisor" (9 employees in unit) (*Having regard to the agreement of the parties*)

**1447-93-R:** United Steelworkers of America (Applicant) v. Barber-Collins Security Services Ltd. (Respondent)

Unit: "all employees of Barber-Collins Security Services Ltd. at 781 York Road in the City of Guelph, save and except Vice-President Operations, Account Supervisor and persons above the rank of Account Supervisor" (11 employees in unit)

**1944-93-R:** Southern Ontario Newspaper Guild Local 87, The Newspaper Guild (CLC, AFL-CIO) (Applicant) v. Metroland Printing, Publishing and Distributing Ltd. (Respondent)

Unit: "all editorial employees of Metroland Printing, Publishing and Distributing Ltd. in Simcoe County save and except the Publisher, the Editor in Chief, and the News Editor at the Barrie Advance, save and except those employees covered by an existing collective agreement as at September 14, 1993" (6 employees in unit)

**2046-93-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Amity Goodwill Industries (Respondent)

Unit: "all employees of Amity Goodwill Industries working at or out of the City of Hamilton, save and except supervisors, persons above the rank of supervisor, office and clerical staff, persons employed in the retail division and vocational rehabilitation professionals" (100 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**2050-93-R:** United Steelworkers of America (Applicant) v. Crisis Centre North Bay (Respondent)

Unit: "all employees of Crisis Centre North Bay in the City of North Bay, save and except shift supervisors, persons above the rank of shift supervisor and secretary/receptionist" (68 employees in unit) (*Having regard to the agreement of the parties*)

**2081-93-R:** Operative Plasterers' and Cement Masons' International Association of the United States and Canada Local Union No: 124, Ottawa, Ontario (Applicant) v. Aries Contracting (Ottawa) Inc. (Respondent)

Unit: "all journeymen and apprentice plasterers and spray fibre applicators, drywall tapers and rigid insulation applicators employed by Aries Contracting (Ottawa) Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice plasterers and spray fibre applicators, drywall tapers and rigid insulation applicators employed by Aries Contracting (Ottawa) Inc. in all sectors of the construction industry except the industrial, commercial and institutional sector in the Regional Municipality of Ottawa-Carleton, and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

**2111-93-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Grant Paving & Materials Limited (Respondent)

Unit: "all employees of Grant Paving & Materials Limited engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same and employers engaged as surveyors, truck drivers and construction labourers in all sectors of the construction industry in the Townships of Strathy, Riddell, Strathcona, Briggs, Chambers, and Cassels, excluding the industrial, commercial and institutional sector, save and except non-working forepersons and persons above the rank of non-working foreperson" (31 employees in unit) (*Having regard to the agreement of the parties*)

**2361-93-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Amico Contracting & Engineering (1992) Inc. (Respondent)

Unit: "all construction labourers in the employ of Amico Contracting & Engineering (1992) Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Amico Contracting & Engineering (1992) Inc. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

**2372-93-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Warren Bitulithic Limited (Respondent)

Unit: "all employees in the employ of Warren Bitulithic Limited in the County of Grey, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors, construction labourers and truck drivers, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (16 employees in unit)

**2378-93-R:** United Steelworkers of America (Applicant) v. J.C.V.R. Packaging Inc. (Respondent) v. Group of Employee Objectors (Intervener) v. Group of Employees (Objectors)

Unit: "all employees of J.C.V.R. Packaging Inc. in the City of Mississauga save and except supervisors, persons above the rank of supervisor, office clerical and sales staff" (86 employees in unit)

**2405-93-R:** Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Applicant) v. The Cambridge Suites Hotel Limited (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of The Cambridge Suites Hotel Limited in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office, clerical, sales and administrative staff, telephone operators, receptionists, cashiers, security personnel, night audit staff, restaurant hosts/hostesses, concierge, front desk staff, reservation staff, room checkers and full time assistant head mini bar attendant" (64 employees in unit) (*Having regard to the agreement of the parties*)

**2412-93-R:** Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Applicant) v. 375901 British Columbia Ltd. c.o.b. as Westin Harbour Castle Hotel (Respondent)

Unit: "all employees employed as cashiers by 375901 British Columbia Ltd. c.o.b. as Westin Harbour Castle Hotel in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor and cashiers employed in the office, accounting or payroll departments" (10 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**2421-93-R:** Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. Arbor Dominion Limited (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of Arbor Dominion Limited at 3380 Wheelton Drive in the City of Windsor, save and except foremen, persons above the rank of foreman, office, sales and technical employees" (34 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**2441-93-R:** United Food and Commercial Workers International Union, AFL-CIO-CLC (Applicant) v. The Rowanwood Retirement Lodge Inc. (Respondent)

Unit: "all employees of The Rowanwood Retirement Lodge Inc. in the Town of Huntsville, save and except supervisors and persons above the rank of supervisor" (27 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**2459-93-R:** Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 141 (Applicant) v. Bluewater Recycling Association (Huron, Lambton, Middlesex, and Perth County) (Respondent)

Unit: "all employees of Bluewater Recycling Association (Huron, Lambton, Middlesex, and Perth County) in the County of Huron, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (17 employees in unit) (*Having regard to the agreement of the parties*)

**2471-93-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Amico Contracting & Engineering (1992) Inc. (Respondent) v. Labourers' International Union of North America, Local 1059 (Intervener)

Unit: "all employees in the employ of Amico Contracting & Engineering (1992) Inc. in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

**2505-93-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Bartek Ingredients Inc. (Respondent)

Unit: "all employees of Bartek Ingredients Inc. in the City of Stoney Creek, save and except supervisors, persons above the rank of supervisor, office, clerical, technical and sales staff" (67 employees in unit) (*Having regard to the agreement of the parties*)

**2510-93-R:** Association of Canadian Film Craftspeople (Applicant) v. Charles Street Video and Performing Arts Society (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of Charles Street Video and Performing Arts Society in the Municipality of Metropolitan Toronto, save and except managers and persons above the rank of manager" (7 employees in unit) (*Having regard to the agreement of the parties*)

**2525-93-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Mackie Automotive Systems (Whitby) Inc. (Respondent)

Unit: "all employees of Mackie Automotive Systems (Whitby) Inc. in the Town of Whitby, save and except supervisors, persons above the rank of supervisor, quality control technicians, office, clerical and sales staff" (113 employees in unit) (*Having regard to the agreement of the parties*)

**2545-93-R:** United Steelworkers of America (Applicant) v. Intertec Security & Investigation Ltd. (Respondent)

Unit: "all security guards of Intertec Security & Investigation Ltd. at 61 Front Street West in the Municipality of Metropolitan Toronto, save and except Patrol Supervisors and persons above the rank of Patrol Supervisor" (4 employees in unit) (*Having regard to the agreement of the parties*)

**2547-93-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. RER Construction Ltd. (Respondent)

Unit: "all construction labourers in the employ of RER Construction Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of RER Construction Ltd. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**2551-93-R:** Canadian Security Union (Applicant) v. Wackenhut of Canada Limited (Respondent)

Unit: "all security guards in the employ of Wackenhut of Canada Limited at 2330 and 2350 Bridletowne Circle in the Municipality of Metropolitan Toronto, save and except supervisors and persons above the rank of supervisor" (5 employees in unit) (*Having regard to the agreement of the parties*)

**2552-93-R:** Canadian Security Union (Applicant) v. Wackenhut of Canada Limited (Respondent)

Unit: "all security guards in the employ of Wackenhut of Canada Limited at 33 Charles Street East in the Municipality of Metropolitan Toronto, save and except supervisors and persons above the rank of supervisor" (3 employees in unit) (*Having regard to the agreement of the parties*)

**2582-93-R:** United Steelworkers of America (Applicant) v. Intertec Security & Investigation Ltd. (Respondent)

Unit: "all security guards of Intertec Security & Investigation Ltd. in the Town of Oakville, save and except Patrol Supervisors and persons above the rank of Patrol Supervisor" (9 employees in unit) (*Having regard to the agreement of the parties*)

**2590-93-R:** Christian Labour Association of Canada (Applicant) v. Meadowvale Security Guard Services Inc. (Respondent)

Unit: "all employees of Meadowvale Security Guard Services Inc. employed at 1405, 1423, 1477, 1547 and 1563 Mississauga Valley Boulevard, 30 and 50 Elm Drive, and 3665 Artista Way in the City of Mississauga, save and except Patrol Supervisors and persons above the rank of Patrol Supervisor" (10 employees in unit) (*Having regard to the agreement of the parties*)

**2604-93-R:** Canadian Union of Public Employees (Applicant) v. Ontario Hydro (Respondent)

Unit: "all security guards of Ontario Hydro at its Kipling Complex in the Municipality of Metropolitan

Toronto, save and except supervisors, persons above the rank of supervisor, and persons for whom any trade union held bargaining rights on the date of application, October 25, 1993” (10 employees in unit) (*Having regard to the agreement of the parties*)

**2610-93-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Innovator Manufacturing Inc. (Respondent)

Unit: “all employees of Innovator Manufacturing Inc. in the City of London, save and except supervisors, persons above the rank of supervisor, office, clerical, technical, sales and service staff” (44 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**2634-93-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. J. Raheb Enterprises Inc. (Respondent)

Unit: “all employees of J. Raheb Enterprises Inc. c.o.b. as Loeb West Grand in the City of Windsor, save and except Office Manager, Store Managers and persons above the rank of Office Manager and Store Manager” (156 employees in unit) (*Having regard to the agreement of the parties*)

**2635-93-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. R. P. Scherer Canada Inc. (Respondent)

Unit: “all employees of R. P. Scherer Canada Inc. in the City of Windsor, save and except supervisors, persons above the rank of supervisor, office and sales staff” (55 employees in unit) (*Having regard to the agreement of the parties*)

**2639-93-R:** Service Employees Union, Local 478 (Applicant) v. St. Joseph’s General Hospital of North Bay, Inc. (Respondent)

Unit: “all employees of St. Joseph’s General Hospital of North Bay, Inc. at the Nipissing Detoxification Centre in North Bay, save and except supervisors, persons above the rank of supervisor, security guards and persons in bargaining units for which any trade union held bargaining rights as of October 27, 1993” (12 employees in unit) (*Having regard to the agreement of the parties*)

**2673-93-R:** Labourers’ International Union of North America, Local 183 (Applicant) v. W.A. Construction Company Limited c.o.b. as Northcliffe Holdings (Respondent)

Unit: “all employees of W.A. Construction Company Limited c.o.b. as Northcliffe Holdings engaged in cleaning and maintenance at 640 Lauder Avenue, in the Municipality of Metropolitan Toronto, including Resident Superintendent, save and except Property Manager, persons above the rank of Property Manager, office and sales staff” (3 employees in unit) (*Having regard to the agreement of the parties*)

**2689-93-R:** United Steelworkers of America (Applicant) v. 595733 Ontario Ltd. c.o.b. as Mags and Fags (Respondent)

Unit: “all employees of 595733 Ontario Ltd. c.o.b. as Mags and Fags in the City of Ottawa, save and except managers and persons above the rank of manager” (13 employees in unit) (*Having regard to the agreement of the parties*)

**2698-93-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 663 (Applicant) v. G.L. Robins Construction Ltd. (Respondent)

Unit: “all plumbers, plumbers’ apprentices, steamfitters, and steamfitters’ apprentices in the employ of G.L. Robins Construction Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers, plumbers’ apprentices, steamfitters, and steamfitters’ apprentices in the employ of G.L. Robins Construction Ltd. in all sectors of the construction industry in the County of Lambton, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (2 employees in unit)

**2701-93-R:** Canadian Union of Public Employees (Applicant) v. Centre Educatif Soleil des Petits (Respondent)

Unit: "all employees of the Centre Educatif Soleil des Petits in the Town of Hawkesbury employed as day care employees, save and except Director, persons above the rank of Director and persons for whom any trade union held bargaining rights as of November 2, 1993" (5 employees in unit) (*Having regard to the agreement of the parties*)

**2706-93-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Modern Building Cleaning Inc. (Respondent)

Unit: "all employees of Modern Building Cleaning Inc. engaged in cleaning and maintenance at the YMCA-YWCA of London, 382 Waterloo Street in the City of London, save and except forepersons and persons above the rank of foreperson" (6 employees in unit) (*Having regard to the agreement of the parties*)

**2726-93-R:** Brewery, General & Professional Workers' Union (Applicant) v. Flexmaster Canada Limited c.o.b. as Uni-Flex Hose (Respondent)

Unit: "all employees of Flexmaster Canada Limited c.o.b. as Uni-Flex Hose in the Town of Whitby, save and except supervisors, persons above the rank of supervisor, office and sales staff" (9 employees in unit) (*Having regard to the agreement of the parties*)

**2730-93-R:** United Steelworkers of America (Applicant) v. Concept Plastics Limited (Respondent)

Unit: "all employees of Concept Plastics Limited in the City of Mississauga, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (48 employees in unit) (*Having regard to the agreement of the parties*)

**2731-93-R:** United Steelworkers of America (Applicant) v. Intertec Security & Investigation Ltd. (Respondent)

Unit: "all security guards of Intertec Security & Investigation Ltd. at 21 Overlea Boulevard, in the City of East York, save and except Patrol Supervisors and persons above the rank of Patrol Supervisor" (2 employees in unit) (*Having regard to the agreement of the parties*)

**2735-93-R:** Canadian Security Union (Applicant) v. Maple Leaf Gardens, Limited (Respondent)

Unit: "all alcohol security officers employed by Maple Leaf Gardens, Limited in the Municipality of Metropolitan Toronto, save and except supervisors and persons above the rank of supervisor" (36 employees in unit) (*Having regard to the agreement of the parties*)

**2736-93-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Memme Excavation Co. Ltd. (Respondent)

Unit: "all employees in the employ of Memme Excavation Co. Ltd. in the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors, excluding the industrial, commercial and institutional sector, save and except non-working foreperson and persons above the rank of non-working foreperson" (8 employees in unit)

**2737-93-R:** Christian Labour Association of Canada (Applicant) v. Meadowvale Security Guard Services Inc. (Respondent)

Unit: "all Site Supervisors of Meadowvale Security Guard Services Inc. employed at 310-320-330 Front Street West and 720 Bay Street in the Municipality of Metropolitan Toronto, save and except Patrol Supervisors and persons above the rank of Patrol Supervisor" (2 employees in unit) (*Having regard to the agreement of the parties*)

**2741-93-R:** Office and Professional Employees International Union (Applicant) v. Mountainview Dental Office (Respondent)

Unit: "all employees of Mountainview Dental Office in the Townships of Schreiber and Terrace Bay, save and except Office Manager, persons above the rank of Office Manager, Dentists and Hygienists" (5 employees in unit) (*Having regard to the agreement of the parties*)

**2751-93-R:** Service Employees Union, Local 210 (Applicant) v. Canadian Mental Health Association (Respondent)

Unit: "all employees of the Canadian Mental Health Association in the County of Kent, save and except Team Leaders, persons above the rank of Team Leader, Administrative Assistant, Volunteer Co-ordinator, cleaning and maintenance employees" (26 employees in unit) (*Having regard to the agreement of the parties*)

**2756-93-R:** United Steelworkers of America (Applicant) v. The Cadillac Fairview Corporation Limited (Respondent)

Unit: "all employees of The Cadillac Fairview Corporation Limited at its Shopping Centres Legal Department at 20 Queen Street West, in the Municipality of Metropolitan Toronto, save and except Law Clerks and persons above the rank of Law Clerk" (12 employees in unit) (*Having regard to the agreement of the parties*)

**2757-93-R:** United Steelworkers of America (Applicant) v. Beatrice Foods Inc. (Respondent)

Unit: "all employees of Beatrice Foods Inc. at its Simcoe Dairy Division in the City of Simcoe, regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except forepersons, persons above the rank of foreperson, office staff and persons in bargaining units for which any trade union held bargaining rights as of November 5, 1993" (3 employees in unit) (*Having regard to the agreement of the parties*)

**2770-93-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Mackie Automotive Systems (Oshawa) Inc. (Respondent)

Unit: "all employees of Mackie Automotive Systems (Oshawa) Inc. in the City of Oshawa, save and except supervisors, persons above the rank of supervisor, quality control technicians, office, clerical and sales staff" (47 employees in unit) (*Having regard to the agreement of the parties*)

**2786-93-R:** International Union of Operating Engineers, Local 793 (Applicant) v. K & E Waste Resource Inc. (Respondent)

Unit: "all employees of K & E Waste Resource Inc. in its Industrial Services High Pressure Wash Division in the City of Sarnia, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff, truck drivers and helpers engaged in the Industrial, Commercial and Institutional Services Division and persons in bargaining units for which any trade union held bargaining rights as of November 8, 1993" (14 employees in unit) (*Having regard to the agreement of the parties*)

**2800-93-R:** United Steelworkers of America (Applicant) v. Intertec Security & Investigation Ltd. (Respondent)

Unit: "all security guards of Intertec Security & Investigation Ltd. working at 5900 Falbourn Street in the City of Mississauga, save and except Patrol Supervisors and persons above the rank of Patrol Supervisor" (5 employees in unit) (*Having regard to the agreement of the parties*)

### **Bargaining Agents Certified Subsequent to a Pre-Hearing Vote**

**1783-93-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. General Motors of Canada Limited (Respondent) v. International Union, United Plant Guard Workers of America (Intervener)

Unit: "all security officers protecting the property of General Motors of Canada Limited, in St. Catharines,

save and except sergeants, persons above the rank of sergeant, office and clerical staff students employed during the school vacation period, and persons in bargaining units for which any trade union held bargaining rights as of October 3, 1988" (35 employees in unit)

Number of names of persons on revised voters' list	223
Number of persons who cast ballots	168
Number of ballots marked in favour of applicant	166
Number of ballots marked in favour of intervener	2

**1784-93-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. General Motors of Canada Limited (Respondent) v. International Union, United Plant Guard Workers of America (Intervener)

Unit: "all security officers employed by General Motors of Canada Limited at its South Plant in the City of Oshawa, in the Regional Municipality of Durham in the geographic limits of Bloor Street on the north, Phillip Murray Avenue on the south, Park Road South on the east and Stevenson Road on the west, save and except sergeants and persons above the rank of sergeant, office and clerical employees, all persons regularly employed for not more than 24 hour per week and all other employees" (80 employees in unit)

Number of names of persons on revised voters' list	223
Number of persons who cast ballots	168
Number of ballots marked in favour of applicant	166
Number of ballots marked in favour of intervener	2

**1785-93-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. General Motors of Canada Limited (Respondent) v. International Union, United Plant Guard Workers of America (Intervener)

Unit: "all security officers employed by General Motors of Canada Limited at its Windsor Transmission plant, in Windsor, save and except supervisors, persons above the rank of supervisor, and persons regularly employed for not more than 24 hour per week" (21 employees in unit)

Number of names of persons on revised voters' list	223
Number of persons who cast ballots	168
Number of ballots marked in favour of applicant	166
Number of ballots marked in favour of intervener	2

**1786-93-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. General Motors of Canada Limited (Respondent) v. International Union, United Plant Guard Workers of America (Intervener)

Unit: "all security officers employed by General Motors of Canada Limited in the Municipality of Metropolitan Toronto, employed in vehicle assembly plants, save and except sergeants, and persons above the rank of sergeant, office and clerical staff" (13 employees in unit)

Number of names of persons on revised voters' list	223
Number of persons who cast ballots	168
Number of ballots marked in favour of applicant	166
Number of ballots marked in favour of intervener	2

**1787-93-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. General Motors of Canada Limited (Respondent) v. International Union, United Plant Guard Workers of America (Intervener)

Unit: "all security officers protecting the property of General Motors of Canada Limited, at Plant No. 2 on Glendale Avenue in St. Catharines, Ontario, save and except sergeants, persons above the rank of sergeant, receptionists, chauffeurs, and students employed as security officers during the school vacation period" (42 employees in unit)

Number of names of persons on revised voters' list	223
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Number of persons who cast ballots	168
Number of ballots marked in favour of applicant	166
Number of ballots marked in favour of intervener	2

**1788-93-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. General Motors of Canada Limited (Respondent) v. International Union, United Plant Guard Workers of America (Intervener)

Unit: "all security officers employed by General Motors of Canada Limited in the City of Oshawa, save and except sergeants, persons above the rank of sergeant, office and clerical staff, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period and security officers employed by General Motors of Canada Limited at its South Plant in the City of Oshawa who are covered by the collective agreement" (24 employees in unit)

Number of names of persons on revised voters' list	223
Number of persons who cast ballots	168
Number of ballots marked in favour of applicant	166
Number of ballots marked in favour of intervener	2

**1789-93-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. General Motors of Canada Limited (Respondent) v. International Union, United Plant Guard Workers of America (Intervener)

Unit: "all security officers employed by General Motors of Canada Limited, at its Diesel Division, in the City of London, Ontario, save and except sergeants, persons above the rank of sergeant, receptionists, office and clerical staff, students employed during the school vacation period, persons regularly employed for not more than 24 hours per week and students covered by subsisting collective agreements" (17 employees in unit)

Number of names of persons on revised voters' list	223
Number of persons who cast ballots	168
Number of ballots marked in favour of applicant	166
Number of ballots marked in favour of intervener	2

**1999-93-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Ford Motor Company of Canada, Limited (Respondent) v. International Union, United Plant Guard Workers of America (Intervener)

Unit: "all plant protection officers of the company at its Oakville plants except supervisors and persons above the rank of supervisor" (16 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of ballots marked in favour of applicant	14
Number of ballots marked in favour of intervener	0

**2000-93-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Ford Motor Company of Canada, Limited (Respondent) v. International Union, United Plant Guard Workers of America (Intervener)

Unit: "all plant protection officers of the company at its Windsor plants except supervisors and persons above the rank of supervisor" (40 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	40
Number of persons who cast ballots	35
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	35
Number of spoiled ballots	1

Number of ballots marked in favour of applicant	28
Number of ballots marked in favour of intervener	6

**2054-93-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Cotain Plastic Products (1980) Ltd. (Respondent) v. International Leather Goods, Plastics, Novelty & Service Workers' Union, Local 8 (Intervener)

Unit: "all employees of Cotain Plastic Products (1980) Ltd. in the Municipality of Metropolitan Toronto, save and except foremen, persons above the rank of foreman, sales, office and clerical staff, persons employed for not more than 24 hours per week and persons employed during the school vacation period" (34 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	32
Number of ballots, excluding segregated ballots, cast by persons whose names appear on voters' list	32
Number of ballots marked in favour of applicant	32
Number of ballots marked in favour of intervener	0
Ballots segregated and not counted	0

**2056-93-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Weldo Plastics Limited (Respondent) v. International Leather Goods, Plastics, Novelty & Service Workers' Union, Local 8 (Intervener)

Unit: "all plant employees of Weldo Plastics Limited in the Municipality of Metropolitan Toronto, save and except for supervisors/foremen, persons above the rank of foreman, office and sales staff, plant clerical and control staff performing functions which would, in the normal course of events, be performed in the central office, compugraphic and computer terminal operators, employees solely employed on engineering, research and development projects, security personnel, office building janitors and office maintenance staff, employees which have not achieved seniority rights and persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (33 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	36
Number of persons who cast ballots	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	24
Number of ballots marked in favour of applicant	18
Number of ballots marked in favour of intervener	6

**2345-93-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Chrysler Canada Ltd. (Respondent) v. International Union, United Plant Guard Workers of America (Intervener)

Unit: "all security guards and fire marshals employed by Chrysler Canada Ltd. at its National Parts Distribution Centre in Mississauga and its plants in Ajax, Etobicoke and Windsor, save and except sergeants, persons above the rank of sergeant, departmental clerks and employees in bargaining units for which any trade union held bargaining rights as of October 4, 1993" (60 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	69
Number of persons who cast ballots	52
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	52
Number of ballots marked in favour of applicant	51
Number of ballots marked in favour of intervener	1

### Bargaining Agents Certified Subsequent to a Post-Hearing Vote

**1864-93-R:** Canadian Security Union (Applicant) v. Group 4 C.P.S. Limited (Respondent)

Unit: "all Security Guards of Group 4 C.P.S. Limited at 68 Yonge Street, in the Municipality of Metropolitan Toronto, save and except Supervisors and persons above the rank of Supervisor" (2 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	0

### Applications for Certification Dismissed Without Vote

**2512-92-R:** United Brotherhood of Carpenters and Joiners of America Local 93 (Applicant) v. 173636 Canada Inc. c.o.b. X-L Construction (Respondent) v. Group of Employees (Objectors) (8 employees in unit)

### Applications for Certification Dismissed Subsequent to a Pre-Hearing Vote

**2241-93-R:** Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 880 (Applicant) v. Accucaps Industries Limited (Respondent)

Unit #1: "all employees of Accucaps Industries Limited in the City of Windsor, save and except supervisors, persons above the rank of supervisor and office and sales staff" (77 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	76
Number of persons who cast ballots	75
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	75
Number of ballots marked in favour of applicant	30
Number of ballots marked against applicant	45

### Applications for Certification Dismissed Subsequent to a Post-Hearing Vote

**1507-93-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Andromeda Publications Ltd. (Respondent)

Unit: "all employees of Andromeda Publications Ltd. at 2113 Dundas Street West, Toronto and 25 Ritchie Avenue, Toronto, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (32 employees in unit)

Number of names of persons on revised voters' list	32
Number of persons who cast ballots	31
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	26
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	19
Number of ballots segregated and not counted	5

### Applications for Certification Withdrawn

**0381-92-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Randon Crane & Leasing Ltd. (Respondent)

**0882-93-R:** International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of

the United States and Canada (Applicant) v. 917297 Ontario Limited and/or 777664 Ontario Limited and/or 777665 Ontario Limited (Respondents)

**1189-93-R:** United Steelworkers of America (Applicant) v. Pinkerton's of Canada Limited (Respondent) v. Intercon Security Limited (Intervener)

**1795-93-R:** Labourers' International Union of North America, Local 607 (Applicant) v. Pierre Gagne Contracting Ltd. (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener)

**1910-93-R:** United Steelworkers of America (Applicant) v. Intertec Security & Investigation Ltd. (Respondent) v. The Canadian Union of Professional Security-Guards (Intervener)

**2013-93-R:** Canadian Union of Public Employees (Applicant) v. The Corporation of the Town of Lindsay (Respondent)

**2055-93-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Vanity Fair Belts Limited (Respondent) v. International Leather Goods, Plastics, Novelty & Service Workers' Union Local 8 (Intervener)

**2060-93-R:** International Brotherhood of Painters and Allied Trades - Local 1891 (Applicant) v. IMOTA Enterprise Ltd. (Respondent)

**2129-93-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Ross Mechanical Systems Ltd. (Respondent)

**2491-93-R:** International Union, United Plant Guard Workers of America, Local 1962 (Applicant) v. Barnes Security Services Ltd. c.o.b. as Metropol Security (Respondent)

**2557-93-R:** Textile Processors, Service Trades, Health Care, Professional And Technical Employees International Union, Local 351 (Applicant) v. Imperial Parking Ltd. (Respondent)

**2579-93-R:** United Steelworkers of America (Applicant) v. Intertec Security & Investigation Ltd. (Respondent) v. Group of Employees (Objectors)

**2580-93-R:** United Steelworkers of America (Applicant) v. Intertec Security & Investigation Ltd. (Respondent)

**2581-93-R:** United Steelworkers of America (Applicant) v. Intertec Security & Investigation Ltd. (Respondent)

**2594-93-R:** Practical Nurses Federation of Ontario (Applicant) v. Victorian Order of Nurses North Bay Branch (Respondent) v. Group of Employees (Objectors)

**2615-93-R:** Canadian Union of Public Employees (Applicant) v. Laidlaw Waste Management Systems (Recycling Depot) (Respondent)

**2628-93-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Perth Community Care Centre Inc. (Respondent)

**2638-93-R:** Canadian Security Union (Applicant) v. Wackenhut of Canada Ltd. (Respondent)

**2672-93-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Browning-Ferris Industries Ltd. (Respondent)

**2692-93-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. El-Met-Parts Inc. (Respondent)

**2693-93-R:** International Association of Machinists and Aerospace Workers, Thunder Bay Lodge 1120 (Applicant) v. Browning-Ferris Industries Limited (Respondent)

**2702-93-R:** United Steelworkers of America (Applicant) v. Goodfellow Inc. (Respondent)

**2759-93-R:** Christian Labour Association of Canada (Applicant) v. Meadowvale Security Guard Services Inc. (Respondent)

## APPLICATION FOR COMBINATION OF BARGAINING UNITS

**1188-93-R:** United Steelworkers of America (Applicant) v. Pinkerton's of Canada Limited (Respondent) (*Withdrawn*)

**1711-93-R:** Canadian Union of Public Employees (Applicant) v. Sudbury District Roman Catholic Separate School Board (Respondent) (*Granted*)

**2413-93-R:** Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Applicant) v. 375901 British Columbia Ltd. c.o.b. as Westin Harbour Castle Hotel (Respondent) (*Granted*)

**2558-93-R:** Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Applicant) v. Imperial Parking Ltd. (Respondent) (*Withdrawn*)

**2596-93-R:** The Corporation of the Town of Deep River (Applicant) v. The Canadian Union of Public Employees, Local 740 (Inside and Outside Workers) (Respondent) (*Withdrawn*)

**2629-93-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Perth Community Care Centre Inc. (Respondent) (*Withdrawn*)

**2750-93-R:** St. Joseph's General Hospital of North Bay, Inc. (Applicant) v. Service Employees' Union, Local 478 (Respondent) (*Withdrawn*)

## APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

**2806-91-R:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters & Joiners of America (Applicant) v. Cultural Woodtek Incorporated, Wooden Trim Carpentry Ltd. (Respondents) (*Granted*)

**2827-92-R:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Beaver Lumber Company Limited, Aikenhead's Home Improvement Warehouse Inc. (Respondents) (*Withdrawn*)

**2838-92-R:** Graphic Communications International Union, Local 500M (Applicant) v. Cyberimages, a Division of Jannock Enterprises Ltd., Batten Graphics, a Division of Jannock Enterprises Ltd. (Respondents) v. The Toronto Typographical Union No. 91/CWA No. 14030 (Intervener) (*Withdrawn*)

**0316-93-R:** International Ladies Garment Workers Union, Locals 14-83-92 (Applicant) v. Monaco Group Inc. and/or Mimran Group Inc. and/or Etac Sales Limited and/or Alfred Sung Designs Inc. and/or 555268 Ontario Limited c.o.b. E & L Sportswear and/or Tang Apparel Co. Limited and/or Nationwide Sportswear Corporation and/or 656125 Ontario Limited c.o.b. as Lisa-Kam Fashions (Respondents) (*Withdrawn*)

**1053-93-R:** Drywall Acoustic Lathing and Insulation Local 675 (Applicant) v. Consolidated Drywall & Acoustics Limited ("Consolidated") and 945179 Ontario Limited c.o.b. as Centennial Drywall ("Centennial") (Respondents) (*Granted*)

**1653-93-R:** Labourers' International Union of North America, Local 183 (Applicant) v. D & R Ventura General Construction Limited, Domura Construction Ltd. & Convia Construction Ltd. (Respondents) (*Granted*)

**1758-93-R:** United Brotherhood of Carpenters and Joiners of America Local 785 (Applicant) v. Nicholls-Radtke Limited, Innovative Steam Technologies, 200 Avenue Road Ltd. (Respondents) (*Granted*)

**1994-93-R:** International Brotherhood of Painters and Allied Trades, Local 1891 (Applicant) v. Strap Drywall and Acoustic Systems Limited and Strap Drywall Systems Limited (Respondents) (*Granted*)

## SALE OF A BUSINESS

**2806-91-R:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters & Joiners of America (Applicant) v. Cultural Woodtek Incorporated, Wooden Trim Carpentry Ltd. (Respondents) (*Granted*)

**2837-92-R:** Graphic Communications International Union, Local 500M (Applicant) v. Cyberimages, a Division of Jannock Enterprises Ltd., Batten Graphics, a Division of Jannock Enterprises Ltd. (Respondents) v. The Toronto Typographical Union No. 91/CWA No. 14030 (Intervener) (*Withdrawn*)

**0316-93-R:** International Ladies Garment Workers Union, Locals 14-83-92 (Applicant) v. Monaco Group Inc. and/or Mimran Group Inc. and/or Etac Sales Limited and/or Alfred Sung Designs Inc. and/or 555268 Ontario Limited c.o.b. E & L Sportswear and/or Tang Apparel Co. Limited and/or Nationwide Sportswear Corporation and/or 656125 Ontario Limited c.o.b. as Lisa-Kam Fashions (Respondents) (*Withdrawn*)

**0881-93-R:** International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 467 (Applicant) v. Famous Players Canadian Corporation Limited and/or Famous Players Limited and/or Famous Players Inc. and/or 777664 Ontario Limited and/or 777665 Ontario Limited and/or 917297 Ontario Limited (Respondents) (*Withdrawn*)

**1053-93-R:** Drywall Acoustic Lathing and Insulation Local 675 (Applicant) v. Consolidated Drywall & Acoustics Limited ("Consolidated") and 945179 Ontario Limited c.o.b. as Centennial Drywall ("Centennial") (Respondents) (*Granted*)

**1653-93-R:** Labourers' International Union of North America, Local 183 (Applicant) v. D & R Ventura General Construction Limited, Domura Construction Ltd. & Convia Construction Ltd. (Respondents) (*Granted*)

**1758-93-R:** United Brotherhood of Carpenters and Joiners of America Local 785 (Applicant) v. Nicholls-Radtke Limited, Innovative Steam Technologies, 200 Avenue Road Ltd. (Respondents) (*Granted*)

**1994-93-R:** International Brotherhood of Painters and Allied Trades, Local 1891 (Applicant) v. Strap Drywall and Acoustic Systems Limited and Strap Drywall Systems Limited (Respondents) (*Granted*)

**2745-93-R:** International Brotherhood of Painters and Allied Trades, Local 1891 (Applicant) v. Starline Contracting Ltd. and Starline Cement Finishing Co. Ltd. (Respondents) (*Granted*)

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**1854-93-R:** The Employees of The Raoul Wallenberg Centres (Applicant) v. Ontario Public Service Employees Union (Respondent) v. 674106 Ontario Limited operating as Raoul Wallenberg Centres (Intervener)

Unit: "all employees of 674106 Ontario Limited operating as Raoul Wallenberg Centres in the City of London, save and except supervisors, persons above the rank of supervisor" (12 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	12
Number of segregated ballots cast by persons whose names appear on voter's list	12
Number of ballots marked in favour of respondent	5
Number of ballots marked against respondent	7

**2034-93-R:** Daniel Haycocks (Applicant) v. Toronto Typographical Union, No. 91, Printing, Publishing, Media Workers Sector of the Communications Workers of America (Respondent) v. London Graphic Industries Inc. (Intervener)

Unit: "all employees of London Graphic Industries Inc. in the Municipality of Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office, clerical, sales employees and students employed during the school vacation period" (22 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of ballots marked in favour of respondent	10
Number of ballots marked against respondent	12

**2136-93-R:** Paula Grau (Applicant) v. Labourers' International Union of North America, Local 183 (Respondent) v. Philmor Group Limited (Intervener)

Unit: "all employees of Philmor Group Limited employed at 80-88 Charles Street, in the Municipality of Metropolitan Toronto, save and except Property Managers, persons above the rank of Property Manager, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (1 employee in unit) (*Dismissed*)

**2450-93-R:** Glenn Waters (Applicant) v. The Toronto Typographical Union No. 91, Communications Workers of America/Printing, Publishing and Media Workers Sector (Respondent) (*Granted*)

**2668-93-R:** Ralph Grau (Applicant) v. Labourers' International Union of North America, Local 183 (Respondent) v. Philmor Group Limited (Intervener) (*Withdrawn*)

## REFERRAL FROM MINISTER (SECTION 109)

**0874-93-M:** London and District Service Workers' Union, Local 220 (Applicant) v. Charterways Transportation Limited (at Kitchener, Ontario) (Respondent) (*Dismissed*)

**1548-93-M:** Retail, Wholesale and Department Store Union Canadian Service Sector Division of United Steelworkers of America, Local 477, United Dairy & Creamery Workers, Local 477, Chartered by the Retail Wholesale and Department Store Union, A.F.L.: C.I.O.: C.L.C. (Applicants) v. Ault Foods Limited (Respondent) (*Terminated*)

**2338-93-M:** The International Association of Machinists and Aerospace Workers, Local Lodge 2792 (Applicant) v. DDM Plastics Inc. (Respondent) (*Granted*)

## APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE

**2064-93-U:** The Canadian Stage Corporation, c.o.b. under the firm name and style of The Canadian Stage Company (Applicant) v. The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 58, Toronto, James Fuller, Bill Hamilton, Gord Graham (Respondent) (*Granted*)

## APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE (CONSTRUCTION INDUSTRY)

**1700-93-U:** Associated Contracting Inc. (Applicant) v. Michael Gallagher and International Union of Operating Engineers, Local 793 (Respondent) (*Dismissed*)

**2915-93-U:** Gottardo Properties (Applicant) v. International Association of Bridge, Structural & Ornamental

Iron Workers, Local 721 and James Power, Stan Arsenault, Jose Matos, Salvator Costa and Jose Peiges (Respondent) (*Withdrawn*)

## **DIRECTION RESPECTING UNLAWFUL LOCKOUT (INDUSTRIAL)**

**2777-93-U:** Labourers' International Union of North America, Local 506 (Applicant) v. Artex Precast Limited, Grant Kafarowski, Manuel Feria (Respondent) (*Withdrawn*)

## **COMPLAINTS OF UNFAIR LABOUR PRACTICE**

**3455-91-U:** Risto Kuzev (Applicant) v. "GMP" - Glass, Molders, Pottery, Plastics & Allied Workers International Union AFL-CIO-CLC Local 64 (Respondent) v. Scepter/Canron Inc. (Intervener) (*Dismissed*)

**1287-92-U:** Canadian Union of Public Employees, Local 5 (Applicant) v. The Corporation of the City of Hamilton (Respondent) (*Granted*)

**2151-92-U:** William Denny (Applicant) v. United Steelworkers of America, Local 2251 (Respondent) (*Withdrawn*)

**2626-92-U:** Brian Cardy (Applicant) v. Communications, Energy & Paperworkers Union of Canada, Local 537 (Respondent) v. Phillips Cables Limited (Intervener) (*Dismissed*)

**2839-92-U:** Graphic Communications International Union, Local 500M (Applicant) v. Cyberimages, a Division of Jannock Enterprises Ltd., Batten Graphics, a Division of Jannock Enterprises Ltd. (Respondents) v. The Toronto Typographical Union No. 91/CWA No. 14030 (Intervener) (*Withdrawn*)

**3485-92-U:** John P. Walsh (Applicant) v. Amalgamated Transit Union (Local 113) and Toronto Transit Commission (Respondents) (*Dismissed*)

**0024-93-U:** Canadian Union of Public Employees, Local 5 (Applicant) v. The Regional Municipality of Hamilton-Wentworth (Respondent) (*Withdrawn*)

**0183-93-U:** Christopher Lawrence Tweedie (Applicant) v. Amalgamated Transit Union Local #113 and Toronto Transit Commission (Respondents) (*Dismissed*)

**0251-93-U:** Peter Happy (Applicant) v. Canadian Auto Workers, Local 444 (Respondent) v. Chrysler Canada Ltd. (Intervener) (*Dismissed*)

**0319-93-U:** Canadian Union of Public Employees (Applicant) v. C.A.R.S.A. Inc. (c.o.b. as Niagara Regional Sexual Assault Centre) (Respondent) (*Withdrawn*)

**0602-93-U:** Pamela Green (Applicant) v. Canadian Auto Workers Local 199 (Respondent) v. General Motors of Canada Limited (Intervener) (*Dismissed*)

**0950-93-U; 0965-93-U:** Ontario English Catholic Teachers' Association Welland Occasional Unit (Applicant) v. Welland County Roman Catholic Separate School Board (Respondent) (*Withdrawn*)

**1001-93-U:** Association des Employés d'Ottawa-Carleton (Employés de bureau, de secretariat et employés techniques) (Applicant) v. La Section catholique du Conseil scolaire de langue française d'Ottawa-Carleton (Respondent) (*Withdrawn*)

**1002-93-U:** Association des Employés d'Ottawa-Carleton (Conducteurs d'autobus) (Applicant) v. La Section catholique du Conseil scolaire de langue française d'Ottawa-Carleton (Respondent) (*Withdrawn*)

**1041-93-U:** Association des Employés d'Ottawa-Carleton (Preposés à l'entretien et à la conciergerie) (Appli-

cant) v. Le Conseil plénier du conseil scolaire de langue française d'Ottawa-Carleton (Respondent) (*Withdrawn*)

**1215-93-U:** Association of Canadian Film Craftspeople (Applicant) v. Charles Street Video and Performing Arts Society, Susan Rynard and Paula Fairfield (Respondent) (*Terminated*)

**1219-93-U:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. Abel Metal Limited (Respondent) (*Withdrawn*)

**1226-93-U:** Amalgamated Clothing and Textile Workers Union (Applicant) v. Royal Shirt Company Limited (Respondent) (*Granted*)

**1418-93-U:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Canadian Call Processing Services Inc. (Respondent) (*Withdrawn*)

**1479-93-U:** Ron Beckles (Applicant) v. Print-It, Division of Pony Express Graphics Inc., Sam Buzaglo (Respondents) (*Dismissed*)

**1527-93-U:** William Hodgskiss (Applicant) v. The Brick Warehouse Corporation (Respondent) (*Dismissed*)

**1529-93-U:** Dianne Poirier (Applicant) v. Aluminum, Brick and Glassworkers' International Union and its Local 203G (Respondent) (*Withdrawn*)

**1570-93-U:** Vince Cutruzzola, J.C. Electric, I.G.W.T. Electric Ltd., V.C. Electric Ltd. (Applicant) v. I.B.E.W. Local Union 115, I.B.E.W. Local Union 353 and all parties of the Principal Agreement (Respondents) (*Dismissed*)

**1660-93-U:** Jorge Mercon (Applicant) v. United Food and Commercial Workers Local 208 (Respondent) v. CanAmara Foods (Intervener) (*Withdrawn*)

**1869-93-U:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Domclean Limited (Respondent) (*Withdrawn*)

**1938-93-U:** James Leitch (Applicant) v. Harris Management (Respondent) (*Withdrawn*)

**1943-93-U:** United Plant Guard Workers of America, Local 1956 (Applicant) v. Scott D. Avery (Company) Limited (Respondent) (*Granted*)

**1982-93-U:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Dryden & District Association for Community Living (Respondent) (*Withdrawn*)

**2026-93-U:** United Food & Commercial Workers International Union, Local 175 (Applicant) v. Bilow's Raceway Auto Parts Inc. (Respondent) (*Withdrawn*)

**2075-93-U:** Todd McVey (Applicant) v. C.P.U. Local 156, Kevin Hobbs, Oliver Coburn (Respondents) v. E.B. Eddy Forest Products Ltd. (Intervener) (*Dismissed*)

**2093-93-U:** Pierre Bernier (Applicant) v. Labourers' International Union of America Local Union 493 (Respondent) (*Withdrawn*)

**2097-93-U:** Theofani Ladas (Applicant) v. Royal York Hotel (Respondent) v. Hotel Employees Restaurant Employees Union Local 75 (Intervener) (*Withdrawn*)

**2116-93-U:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) and its Local 1256 (Applicant) v. Crown Fab Division, The Allen Group Canada, Limited (Respondent) (*Withdrawn*)

**2125-93-U:** Toronto Greenpeace Staff Association (Applicant) v. Greenpeace Canada (Respondent) (*Withdrawn*)

**2145-93-U:** Nick Nugent (Applicant) v. Metropolitan Toronto Civic Employee's Union, Local 43, and The Municipality of Metropolitan Toronto (Respondents) (*Withdrawn*)

**2358-93-U:** Garry Gallaher (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Respondent) (*Withdrawn*)

**2388-93-U:** M.V. (Peggy) MacDonald-Harley (Applicant) v. Canadian Union of Public Employees - C.L.C Ontario Hydro Employees' Union Local 1000 (Respondent) (*Withdrawn*)

**2416-93-U:** Independent Canadian Transit Union (Applicant) v. Olympia and York Developments Ltd. (Respondent) (*Withdrawn*)

**2419-93-U:** Dr. Abdul Ebrahim, Dr. Abdul Al-Ameen (Applicants) v. Imperial College of Toronto Inc. Mr. Guang Tao Kuo, President Mr. Tommy Lynn, Senior Administrator (Respondent) (*Withdrawn*)

**2424-93-U:** International Brotherhood of Electrical Workers, Local Union 1230 (Applicant) v. Dana Manor Inc. (Respondent) (*Withdrawn*)

**2425-93-U:** International Brotherhood of Electrical Workers, Local Union 1230 (Applicant) v. MacQuilly Inc. o/a Victoria Manor (Respondent) (*Withdrawn*)

**2426-93-U:** International Brotherhood of Electrical Workers, Local Union 1230 (Applicant) v. Walkerville Rest Home Ltd. (Respondent) (*Withdrawn*)

**2427-93-U:** Labourers' International Union of North America, Local 183 (Applicant) v. Philmor Group Limited (Respondent) (*Dismissed*)

**2445-93-U:** Ranjit Vander (Applicant) v. The Communications, Energy and Paperworkers Union of Canada, and its Local 535 (Respondent) (*Withdrawn*)

**2461-93-U:** Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Applicant) v. The Cambridge Suites Hotel Limited (Respondent) (*Withdrawn*)

**2492-93-U:** Professional Staff Association of the Ontario Institute for Studies in Education ("PSA") (Applicant) v. David Guptill and Ontario Institute for Estudios in Education ("OISE") (Respondent) (*Withdrawn*)

**2501-93-U:** Jean Pierre Lavigne (Applicant) v. John Burt - President Teamsters Local 230 (Respondent) (*Withdrawn*)

**2508-93-U:** Kenneth J. Berrea (Applicant) v. OSSTF #26 Plant Support Staff, OBE Ottawa Board of Education (Respondents) (*Withdrawn*)

**2520-93-U:** United Rubber, Cork, Linoleum and Plastic Workers of America, Local 965 (Applicant) v. Alliance Drivers Services Inc. (Formerly ACF Personnel Inc.) and Union Carbide Chemicals and Plastics Canada Inc. (Respondents) (*Granted*)

**2554-93-U:** Patrick Oliver Dixon (Applicant) v. Teamsters Local 419 and The Ontario Produce Company, The Oshawa Foods Division of the Oshawa Group Limited (Respondents) (*Withdrawn*)

**2587-93-U:** Labourers' International Union of North America, Local 837 (Applicant) v. Steed and Evans Limited and Northland Bitulithic Limited (Respondents) (*Withdrawn*)

**2611-93-U:** Service Employees Union, Local 210 (Applicant) v. Malcolm Place Retirement Residence (Respondent) (*Withdrawn*)

**2612-93-U:** Communications, Energy and Paperworkers Union of Canada, CLC. (Applicant) v. Towne Cartage Ltd. (Respondent) (*Withdrawn*)

**2613-93-U:** Housekeeping Dept. and all employees of Housekeeping Dept. (Applicant) v. C.L.A.C. 391 Vine St., St. Catharines (Respondent) v. Versa Care Ltd/Bestview Health Care Centre (Intervener) (*Withdrawn*)

**2620-93-U:** Labourers' International Union of North America, Local 1267 (Applicant) v. Laidlaw Transit Ltd. (Respondent) (*Withdrawn*)

**2633-93-U:** Ann-Marie McNally (Applicant) v. Joyce Taggart, President Local 1590 I.B.E.W. Patricia Wright, Chief Steward Local 1590 I.B.E.W. Phil Fleming Int. Nat. Rep. Local 1590 I.B.E.W. (Respondent) (*Withdrawn*)

**2663-93-U:** Graphic Communications International Union, Local N-1 (Applicant) v. Michelin Tires (Canada) Ltd. and Ray Krawchuk (Respondent) (*Withdrawn*)

**2674-93-U:** Labourers' International Union of North America, Local 183 (Applicant) v. Hurley Corporation (Respondent) (*Withdrawn*)

**2675-93-U:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. RER Construction Ltd. (Respondent) (*Granted*)

**2683-93-U:** Maureen Colistro (Applicant) v. Royal Crest Lifecare, operating as Mississauga Lifecare and Ontario Nurses Association (Respondents) (*Dismissed*)

**2691-93-U:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Rowanwood Retirement Lodge (Respondent) (*Withdrawn*)

**2707-93-U:** Elizabeth Brown and Arbor Dominion Limited (Applicants) v. Hotel Employees Restaurant Employees Union, Local 75 (Respondent) (*Granted*)

**2710-93-U:** International Union, United Plant Guard Workers of America, Local 1956 (Applicant) v. Scott D. Avery (Company) Limited (Respondent) (*Withdrawn*)

**2720-93-U:** Shirley White (Applicant) v. Northwest Protection Services (Respondent) (*Dismissed*)

**2721-93-U:** The International Association of Machinists and Aerospace Workers Local 905 (Applicant) v. Dowty Aerospace (Respondent) (*Withdrawn*)

**2725-93-U:** Canadian Union of Public Employees, Local 54 (Applicant) v. The Corporation of the Town of Ajax (Respondent) (*Withdrawn*)

**2752-93-U:** Local 444 C.A.W. - Marine Division (Applicant) v. Lake Erie Foods (Respondent) (*Dismissed*)

**2762-93-U:** Di-Khim Chun (Applicant) v. Corning Canada Inc. (Respondent) (*Dismissed*)

**2764-93-U:** Stepanoski Aco (Applicant) v. United Food and Commercial Workers Union, Local 1000A (Respondent) (*Dismissed*)

**2765-93-U:** Towne Cartage Ltd. (Applicant) v. Arnold Durant, David Ralph and Communications, Energy and Paperworkers Union (Respondents) (*Withdrawn*)

**2771-93-U:** Brian Desautels (Applicant) v. Local 2251 Executives, Cokemaking, Delegate (Steve Stadnisky) Cokemaking, Health and Safety (Dean Mador) (Respondents) (*Withdrawn*)

**2778-93-U:** Labourers' International Union of North America, Local 506 (Applicant) v. Artex Precast Limited; Grant Kafarowski; Manuel Feria (Respondent) (*Withdrawn*)

**2792-93-U:** Service Employees Union, Local 210 (Applicant) v. La Chaumiere Retirement Residence (Respondent) (*Withdrawn*)

**2793-93-U:** Barbara Formica (Applicant) v. Hotel, Motel and Restaurant Employees Union Local 442 (AFL-CIO, CLC) (Respondent) (*Withdrawn*)

**2798-93-U:** I. J. Bell (Applicant) v. OPSEU - in particular Fred Upshaw, Andrew Todd, Andre Bekerman, George Richards, Bill Kuehnbaum and the NDP party of Ontario (Respondent) (*Dismissed*)

**2806-93-U:** Jim Sypher, Kim Small, Austin Galea, Irene Emiljanowicz (Applicant) v. CAW Local 222 Dean Lindsay - District Committeeman District #7 (Respondent) (*Withdrawn*)

**2807-93-U:** Karol Switakowski (Applicant) v. Central Hospital (Respondent) (*Withdrawn*)

**2864-93-U:** Terry Howey (Applicant) v. International Brotherhood of Painters and Allied Trades Local 1824 (Respondent) (*Withdrawn*)

**2876-93-U:** Irene Dobbin, Dilia Pinto (Applicant) v. Laundry & Linen Drivers and Industrial Workers, Local 847 (Respondent) (*Dismissed*)

**2957-93-U:** United Food and Commercial Workers International Union, Locals 175 and 633 (Applicant) v. The Great Atlantic & Pacific Company of Canada Limited (Respondent) (*Granted*)

**2964-93-U:** Ontario Public Service Employees Union (Applicant) v. The Ministry of Solicitor General and Correctional Services, and Nu-Mark Food Services Ltd. (Respondents) (*Dismissed*)

## APPLICATION FOR INTERIM ORDER

**0951-93-M:** Ontario English Catholic Teachers' Association Welland Occasional Unit (Applicant) v. Welland County Roman Catholic Separate School Board (Respondent) (*Withdrawn*)

**1701-93-M:** Associated Contracting Inc. (Applicant) v. Michael Gallagher and International Union of Operating Engineers, Local 793 (Respondent) (*Dismissed*)

**2020-93-M:** The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 58, Toronto (Applicant) v. The Canadian Stage Corporation, c.o.b. under the firm name and style of The Canadian Stage Company (Respondent) (*Dismissed*)

**2519-93-M:** United Rubber, Cork, Linoleum and Plastic Workers of America, Local 965 (Applicant) v. Alliance Driver Services Inc. (formerly ACF Personnel Inc.) and Union Carbide Chemicals and Plastics Canada Inc. (Respondents) (*Terminated*)

**2819-93-M:** International Brotherhood of Electrical Workers, Local 636 (Applicant) v. The Hydro-Electric Commission of the City of Ottawa (Respondent) (*Dismissed*)

## APPLICATIONS FOR RELIGIOUS EXEMPTION

**2114-93-M:** Henry A. Lanting (Applicant) v. Canadian Union of Educational Workers and Governing Council of the University of Toronto (Respondents) (*Withdrawn*)

## APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

**2464-93-M:** Bertrand Faure Ltd. (Employer) v. United Steelworkers of America Local 8694 (Trade Union) (*Granted*)

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**1927-93-M:** Michael Hennessy (Applicant) v. Canadian Union of Public Employees, Local 1280 (Respondent) (*Withdrawn*)

## JURISDICTIONAL DISPUTES

**1206-92-JD:** Ellis-Don Limited, The Jackson-Lewis Company Limited, Eastern Construction Company Limited (Applicants) v. United Brotherhood of Carpenters and Joiners of America, Local 27, Labourers International Union of North America, Local 183 (Respondents) (*Granted*)

**2011-93-JD:** International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Applicant) v. Ontario Sheet Metal Workers' and Roofers' Conference, Sheet Metal Workers' International Association, Local 269, Electrical Power Systems Construction Association, E.S. Fox Limited (Respondents) (*Withdrawn*)

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**3528-92-OH:** Craig Gentle (Applicant) v. Comstock Canada (Respondent) (*Withdrawn*)

**0142-93-OH:** Daniel Creighton (Applicant) v. The Crown in Right of Ontario, Ministry of Natural Resources (Respondent) (*Withdrawn*)

## CONSTRUCTION INDUSTRY GRIEVANCES

**1510-91-G:** Sheet Metal Workers' International Association, Local 539 (Applicant) v. #515422 Ontario Ltd., carrying on business as Woodstock Roofing and Sheet Metal, G.N.I. Construction Ltd. (Respondents) (*Granted*)

**1878-91-G:** International Association of Bridge, Structural and Ornamental Ironworkers, International Association of Bridge, Structural and Ornamental Ironworkers, Local 700 (Applicant) v. Electrical Power Systems Construction Association, Ontario Hydro, Birmingham Construction Limited (Respondents) v. Labourers' International Union of North America, Local 1089 (Intervener) (*Terminated*)

**1062-92-G:** Sheet Metal Workers' International Association, Local 473 (Applicant) v. #515422 Ontario Limited, c.o.b. as Woodstock Roofing and Sheet Metal, G.N.I. Construction Ltd. (Respondents) (*Granted*)

**1107-92-G:** Drywall, Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Consolidated Drywall & Acoustics Ltd. (Respondent) (*Granted*)

**2131-92-G:** International Union of Operating Engineers, Local 793 (Applicant) v. 582242 Ontario Limited o/a Sierra Landscaping (Respondent) (*Granted*)

**3178-92-G:** Sheet Metal Workers' International Association, Local 473 (Applicant) v. #515422 Ontario Limited, c.o.b. as Woodstock Roofing and Sheet Metal, Great Northern Industries Inc., G.N.I. Construction Ltd. (Respondents) (*Granted*)

**3704-92-G:** International Brotherhood of Painters and Allied Trades Local 1891 (Applicant) v. Strap Drywall and Acoustics Systems Limited (Respondent) (*Granted*)

**0167-93-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Co-X-Co Construction Ltd. (Respondent) v. Metropolitan Toronto Sewer and Watermain Contractors Association (Intervener) (*Withdrawn*)

**0713-93-G:** Sheet Metal Workers' International Association, Local 269 (Applicant) v. E.S. Fox Limited (Re-

spondent) v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Intervener) (*Withdrawn*)

**1052-93-G:** Drywall Acoustic Lathing and Insulation Local 675 (Applicant) v. Consolidated Drywall & Acoustics Limited ("Consolidated") and 945179 Ontario Limited c.o.b. as Centennial Drywall ("Centennial") (Respondents) (*Granted*)

**1072-93-G:** Sheet Metal Workers' International Association, Local Union No. 285 (Applicant) v. Weston Sheet Metal Co, a Division of Lung Metal Products Limited (Respondent) (*Granted*)

**1220-93-G:** Iron Workers District Council of Ontario International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 International Association of Bridge, Structural and Ornamental Iron Workers, Local 736 (Applicant) v. Abel Metal Limited (Respondent) (*Withdrawn*)

**1306-93-G:** Groff & Associates Ltd. and Mechanical Contractors Association Ontario (Applicants) v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 599 (Respondent) (*Granted*)

**1344-93-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 552 (Applicant) v. The Board of Education for the City of Windsor (Respondent) (*Terminated*)

**1632-93-G; 2344-93-G:** Labourers' International Union of North America, Local 527 (Applicant) v. Denis Brisbois Contractor Ltd. (Respondent); Labourers' International Union of North America, Local 527 (Applicant) v. Denis Brisbois Contractors Limited (Respondent) (*Granted*)

**1750-93-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Frankfurt Investments Ltd. (Respondent) (*Withdrawn*)

**1759-93-G:** United Brotherhood of Carpenters and Joiners of America Local 785 (Applicant) v. Nicholls-Radtke Limited, Innovative Steam Technologies, 200 Avenue Road Ltd. (Respondents) (*Granted*)

**1782-93-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 254 (Applicant) v. Premier Pipelines Inc. and Murphy Contracting Inc. (a Joint Venture) (Respondent) (*Dismissed*)

**1792-93-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. Mediro Wrought Iron Limited (Respondent) (*Granted*)

**1809-93-G:** United Brotherhood of Carpenters and Joiners of America, Local 249 (Applicant) v. Aldershot Flooring Limited (Respondent) (*Granted*)

**1844-93-G:** International Brotherhood of Painters and Allied Trades, District Council 46 (Applicant) v. Sky-line Painting & Decorating Limited (Respondent) (*Granted*)

**1921-93-G:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Jose Monteiro Carpentry, 607015 Ontario Ltd. (Respondents) (*Withdrawn*)

**1972-93-G:** Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen and Local 12 Kitchener (Applicant) v. Reinhardt Masonry (Respondent) (*Granted*)

**1973-93-G:** International Union of Operating Engineers, Local 793 (Applicant) v. James Kemp Construction Ltd. (Respondent) (*Granted*)

**2005-93-G:** Christian Labour Association of Canada Local 150 (Applicant) v. Sandercott Heating and Sheet Metal Inc. (Respondent) (*Withdrawn*)

**2044-93-G:** Labourers' International Union of North America, Local 183 (Applicant) v. S.B. Investments (Respondent) (*Granted*)

**2135-93-G:** United Brotherhood of Carpenters and Joiners of America, Local 93 (Applicant) v. Thomas G. Fuller Construction Co., (1958) Ltd. (Respondent) (*Withdrawn*)

**2150-93-G; 2862-93-G:** Ontario Allied Construction Trades Council on its own behalf and on behalf of United Brotherhood of Carpenters and Joiners of America, Labourers' International Union of North America, International Association of Heat and Frost Insulators and Asbestos Workers, International Union of Operating Engineers, International Brotherhood of Painters and Allied Trades, Operative Plasterers and Cement Masons International Association and International Brotherhood of Teamsters (Applicant) v. Electrical Power Systems Construction Association and Ontario Hydro (Respondents) (*Withdrawn*)

**2247-93-G:** The International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades, Local 1494 (Applicant) v. Lakeview Painting (1990) Limited (Respondent) (*Withdrawn*)

**2349-93-G; 2351-93-G:** International Association of Bridge, Structural and Ornamental Iron Workers (Applicant) v. The Electrical Power Systems Construction Association and WKRD Utility Construction Inc. (Respondents); International Association of Bridge, Structural and Ornamental Iron Workers (Applicant) v. The Electrical Power Systems Construction Association and Ontario Hydro (Respondents) (*Withdrawn*)

**2376-93-G:** International Brotherhood of Electrical Workers, Local Union 1788 and IBEW Electrical Power Systems Construction Council of Ontario (Applicant) v. Ontario Hydro and Electrical Power Systems Construction Association (Respondents) (*Granted*)

**2444-93-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 463 (Applicant) v. Gus Mechanical Engineering Inc. (Respondent) (*Granted*)

**2453-93-G:** Sheet Metal Workers' International Association, Local 30 (Applicant) v. Bonavista Sheet Metal (Respondent) (*Withdrawn*)

**2527-93-G:** International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. 975575 Ont. Ltd. c.o.b. as Blandford Industrial Insulation (Respondent) (*Granted*)

**2549-93-G:** Christian Labour Association of Canada, Local 6 (Applicant) v. Canral Electric Limited (Respondent) (*Granted*)

**2562-93-G:** The Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen on its own behalf and on behalf of the International Union of Bricklayers and Allied Craftsmen, Local 20, Oshawa (Applicant) v. Bernel Masonry Limited (Respondent) (*Granted*)

**2567-93-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. Urban Mechanical (1979) Ltd., Urban Mechanical Contractors' (1979) Ltd. (Respondent) (*Granted*)

**2568-93-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. CPP Plumbing Limited (Respondent) (*Granted*)

**2569-93-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. Pan-Wal Mechanical Services Limited/Pan-Wal Mechanical Services Inc. (Respondent) (*Withdrawn*)

**2571-93-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. Urban Mechanical (1979) Ltd./Urban Mechanical

Contracting (1979) Ltd., The Metropolitan Plumbing and Heating Contractors Association Toronto (Respondents) (*Granted*)

**2589-93-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Olympia Excavating & Grading Co. Ltd. (Respondent) (*Granted*)

**2592-93-G:** International Brotherhood of Painters & Allied Trades (Applicant) v. Merit Glass Ltd. (Respondent) (*Granted*)

**2593-93-G:** Labourers' International Union of North America Local 1059 (Applicant) v. Vandenburg Contracting (1982) Ltd. (Respondent) (*Granted*)

**2602-93-G:** United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Vista Development Group Inc. and Chris Walsh (Respondent) (*Withdrawn*)

**2605-93-G; 2606-93-G:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Supreme Store Fixtures Ltd. (Respondent) (*Granted*)

**2616-93-G:** United Brotherhood of Carpenters and Joiners of America Local 1256 (Applicant) v. E & D Scaffold Services Ltd. (Respondent) (*Withdrawn*)

**2647-93-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Plastina Investments Limited (Respondent) (*Granted*)

**2652-93-G:** International Union of Bricklayers and Allied Craftsmen Local 2, Ontario (Applicant) v. J.R.S. Construction Inc. (Respondent) (*Granted*)

**2666-93-G:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters & Joiners of America (Applicant) v. Acura Forming Ltd. (Respondent) (*Granted*)

**2676-93-G:** Sheet Metal Workers' International Association, Local 473 (Applicant) v. Great Northern Industries Inc. (Respondent) (*Granted*)

**2695-93-G:** International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. Ladanna Insulation Ltd. (Respondent) (*Granted*)

**2703-93-G:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Montreal Parquetry Floors Ltd. (Respondent) (*Withdrawn*)

**2714-93-G:** Operative Plasterers and Cement Masons International Association of the United States and Canada Local 598 (Applicant) v. Smith & Cote General Contractors (Respondent) (*Granted*)

**2715-93-G:** Operative Plasterers and Cement Masons International Association of the United States and Canada Local 598 (Applicant) v. Crete Flooring Group Limited (Respondent) (*Granted*)

**2716-93-G:** Operative Plasterers and Cement Masons International Association of the United States and Canada Local 598 (Applicant) v. Blandford Insulation Ltd. and 975575 Ontario Limited (Respondent) (*Withdrawn*)

**2719-93-G:** Operative Plasterers and Cement Masons International Association of the United States and Canada Local 598 (Applicant) v. Ancar Cement Ltd. (Respondent) (*Granted*)

**2724-93-G:** Labourers' International Union of North America, Local 506 (Applicant) v. Seamless Industrial Floor Coatings (Respondent) (*Granted*)

**2744-93-G:** International Brotherhood of Painters and Allied Trades, Local 1891 (Applicant) v. Starline Contracting Ltd. and Starline Cement Finishing Co. Ltd. (Respondents) (*Granted*)

**2753-93-G:** Sheet Metal Workers' International Association Local 47 (Applicant) v. Duron Ottawa Limited (Respondent) (*Dismissed*)

**2754-93-G:** Sheet Metal Workers' International Association Local 47 (Applicant) v. Duron Ottawa Limited (Respondent) (*Dismissed*)

**2779-93-G:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Centre Leasehold Improvements Limited (Respondent) (*Granted*)

**2787-93-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Pineridge Construction (1986) Ltd. (Respondent) (*Granted*)

**2788-93-G; 2822-93-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Capelas Homes Ltd., Eagle Framers & Carpenters Ltd. (Respondent); Labourers' International Union of North America, Local 183 (Applicant) v. Capelas Homes Ltd. and/or Eagle Framers & Carpenters Ltd. and/or Eagle Bricklayers Ltd. (Respondents) (*Granted*)

**2791-93-G:** Labourers' International Union of North America, Local 1036 (Applicant) v. Graham B. Newman Construction (Respondent) (*Withdrawn*)

**2799-93-G:** Quality Control Council of Canada (Applicant) v. Unique Detection Services Ltd. (Respondent) (*Granted*)

**2803-93-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Ontario Paving Construction Limited; Ontario Paving Company Limited; Giuseppe Alfano and Sons Ltd.; Pavex Canada Ltd.; Abco Holdings Inc.; and Ontario Paving Inc. (Respondents) (*Granted*)

**2804-93-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Donald Construction Limited (Respondent) (*Granted*)

**2813-93-G:** United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. TESC Contracting Limited (Respondent) (*Withdrawn*)

**2823-93-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Cana Star Enterprises Ltd. and/or D.O.V.V. Investments Limited and/or Desmark Developments Limited and/or Siltonwood Developments Limited and/or Deep Purple Investments Limited (Respondent) (*Granted*)

**2848-93-G; 2849-93-G; 2852-93-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Amberland Electric Inc. (Respondent); International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Proteus Electric Ltd. (Respondent); International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Protech Electrical Services (Respondent) (*Withdrawn*)

**2853-93-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Standard Underground High Voltage (Respondent) (*Withdrawn*)

**2858-93-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Meznic-Agena Electric (Respondent) (*Withdrawn*)

**2859-93-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Lenwick Building Systems Inc. (Respondent) (*Withdrawn*)

**2860-93-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Hergert Electric Ltd. (Respondent) (*Withdrawn*)

**2872-93-G:** International Union of Bricklayers & Allied Craftsmen Local 12 (Applicant) v. George & Asmusen Limited (Respondent) (*Granted*)

## APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

**0789-91-JD; 0875-91-JD; 1670-91-JD; 1687-91-JD:** Sayers & Associates Limited (Applicant) v. Sheet Metal Workers' International Association Local 30 and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Respondents) v. Ontario Sheet Metal and Air Handling Group (Intervener); Harold R. Stark, Division of William Stark Group Inc. (Applicant) v. Sheet Metal Workers' International Association, Local 392 and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Respondents) v. Ontario Sheet Metal and Air Handling Group (Intervener); Sheet Metal Workers' International Association, Local 269 (Applicant) v. E.S. Fox Limited and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 463 (Respondents) v. Ontario Sheet Metal and Air Handling Group (Intervener); United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Sheet Metal Workers' International Association, Local 30 and English & Mould Ltd. (Respondents) v. Ontario Sheet Metal and Air Handling Group (Intervener) (*Dismissed*)

**4144-91-R; 4174-91-R:** Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Metroland Printing, Publishing and Distributing Limited c.o.b. as Ajax/Pickering News Advertiser (Respondent); Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Metroland Printing, Publishing and Distributing Limited c.o.b. as Oshawa/Whitby This Week (Respondent) (*Dismissed*)

**0468-93-R; 1150-93-U:** IWA - Canada (Applicant) v. Madawaska Hardwood Flooring Inc. (Respondent); Stephen Perry, Kevin Cruise, Lorrie Gauthier, Marcel Mathieu, Ken Rekowski (Applicant) v. IWA - Canada (Respondent) v. Madawaska Hardwood Flooring Inc. (Intervener) (*Dismissed*)

**1570-93-U:** Vince Cutruzzola, J.C. Electric, I.G.W.T. Electric Ltd., V.C. Electric Ltd. (Applicant) v. I.B.E.W. Local Union 115, I.B.E.W. Local Union 353 and all parties of the Principal Agreement (Respondents) (*Dismissed*)

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**2916-93-M:** The Great Atlantic & Pacific Company of Canada, Limited (Applicant) v. United Food & Commercial Workers International Union, Locals 175 and 633, Brian Donaghy, Darrin Fay, Frank Fortunato, Rick Fox, Helmut Halla, Robert Liotti, Donald Lupton, Gene Martin, Pam Murdok, Patricia O'Doherty, Kathy Papaconstantino, Irene Park, Cliff Skinner (Respondents) (*Dismissed*)

**2972-93-M:** The Great Atlantic & Pacific Company of Canada, Limited (Applicant) v. United Food & Commercial Workers International Union, Locals 175 and 633, Christopher Papakonstantino, Mike Wong, Anna Germenis, Jackson Waddell (Respondents) (*Withdrawn*)









*Ontario Labour Relations Board,  
400 University Avenue,  
Toronto, Ontario  
M7A 1V4*

ISSN 0383-4778



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# **ONTARIO LABOUR RELATIONS BOARD REPORTS**

## **Annual Consolidated Index 1993**



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# ONTARIO LABOUR RELATIONS BOARD REPORTS

A Monthly Series of Decisions from the  
Ontario Labour Relations Board

## Annual Consolidated Index 1993

EDITOR: RON LEBI

Selected decisions of particular reference value are  
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Reports*, Butterworth & Co., Toronto.



Typeset, Printed and Bound by Union Labour in Ontario





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application for failure to raise *prima facie* case - Board directing responding party to proceed first with its evidence

THE ESSEX COUNTY BOARD OF EDUCATION; RE OSSTF ..... (July) 687

Adjournment - Jurisdictional Dispute - Practice and Procedure - Sector Determination - Carpenters' and Labourers' unions disputing assignment of carpentry portion of concrete forming work in relation to various outdoor concrete structures, including retaining walls, seating walls, planters and curbs - Labourers' union raising "sector" issue and arguing that "consultation" should be adjourned so that full hearing into sector issue can be held and notice given to all parties - Board satisfied that it can determine sector issue for purpose of jurisdictional dispute proceedings on basis of material before it and consultation with parties - Board satisfied that work in dispute falling in ICI sector and not in "landscaping" sector as submitted by Labourers' union - Board satisfied that trade agreement between Carpenters' and Labourers' union and that area practice supporting Carpenters' union claim - Board directing that work in dispute be assigned to Carpenters' union

ELLIS-DON LIMITED, THE JACKSON-LEWIS COMPANY LIMITED AND EASTERN CONSTRUCTION COMPANY LIMITED; RE CJA, LOCAL 27, AND LIUNA, LOCAL 183 ..... (Nov.) 1130

Adjournment - Practice and Procedure - Unfair Labour Practice - Parties agreeing to *sine die* adjournment of unfair labour practice complaint in which union had requested expedited hearing under section 92.2 of the *Act* - Board taking union's adjournment request to be withdrawal of request for expedited hearing - Board granting *sine die* adjournment, but for period not to exceed three months

COOPER INDUSTRIES (CANADA) INC. C.O.B. AS WAGNER DIVISION OF COOPER INDUSTRIES (CANADA) INC.; RE UNITED STEELWORKERS OF AMERICA ..... (Mar.) 157

Adjustment Plan - Discharge - Interference in Trade Unions - Interim Relief - Remedies - Unfair Labour Practice - Bargaining unit chairperson discharged some months before scheduled closure of part of employer's plant - Chairperson's discharge grievance being arbitrated, but arbitration proceeding likely to continue beyond closure date - Employer refusing to discuss adjustment plan with union so long as chairperson included on union's bargaining committee - Union seeking order preventing employer from refusing to allow chairperson to participate as member of union committee negotiating adjustment plan - Employer identifying no significant harm resulting from granting order sought - Board directing employer to cease and desist from refusing to recognize and deal with chairperson as member of union committee, and also to meet with union committee in order that parties may bargain in good faith to make adjustment plan

CROWN FAB DIVISION, THE ALLEN GROUP CANADA, LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 1256 ... (Oct.) 960

Arbitration - Adjournment - Intimidation and Coercion - Practice and Procedure - Unfair Labour Practice - Board adjourning applicant's unfair labour practice complaint *sine die* pending completion of arbitration process - Board to deal with case after arbitrator's decision if necessary to do so - Board directing that copies of its decision be posted in workplace

FORTINOS SUPERMARKET LIMITED; RE ERROL MCKENZIE KETTELL; RE UFCW, LOCALS 175/633 ..... (Oct.) 974

Bargaining Rights - Abandonment - Certification - Construction Industry - Timeliness - Certification applications brought by Bricklayers' union and Labourers' union barred by collective agreement between City and CUPE - Board satisfied that CUPE collective agreement applying to groups of employees whom applicants seeking to represent - Board rejecting

alternative argument that CUPE abandoned bargaining rights with respect to employees covered by certification applications - Applications dismissed

CORPORATION OF THE OF CITY OF ST. THOMAS; RE BAC, LOCAL 5; RE CUPE ..... (May)

408

Bargaining Rights - Abandonment - Conciliation - Construction Industry - Evidence - Judicial Review - Strike - Employer asserting that threatened strike unlawful on ground that union had previously abandoned bargaining rights - Threatened strike following timely "notice to bargain", appointment of conciliation officer and issuance of "no board" report - Board declining to inquire into continued existence of bargaining rights in circumstances of this case - Board also not accepting employer's assertion that threatened picketing by union improperly motivated and, therefore, unlawful - Application dismissed - Employer applying for judicial review and seeking to have matter heard before single judge on grounds of urgency - Court not satisfied that matter "urgent" and transferring application to Divisional Court

ASSOCIATED CONTRACTING INC.; RE THE QUEEN IN RIGHT OF ONTARIO (MINISTER OF LABOUR), THE OLRB AND IUOE, LOCAL 793 ..... (Oct.)

1071

Bargaining Rights - Abandonment - Conciliation - Construction Industry - Evidence - Picketing - Strike - Employer asserting that threatened strike unlawful on ground that union had previously abandoned bargaining rights - Threatened strike following timely "notice to bargain", appointment of conciliation officer and issuance of "no board" report - Board declining to inquire into continued existence of bargaining rights in circumstances of this case - Board also not accepting employer's assertion that threatened picketing by union improperly motivated and, therefore, unlawful - Application dismissed

ASSOCIATED CONTRACTING INC.; RE MICHAEL GALLAGHER AND IUOE, LOCAL 793 ..... (Nov.)

1117

Bargaining Rights - Abandonment - Construction Industry - Construction Industry Grievance - In response to union's grievance, employer submitting that union's bargaining rights did not cover work in construction industry and that bargaining rights, in any event, abandoned - Board finding that union's bargaining rights covering construction industry carpentry work and that bargaining rights not abandoned

THE HUDSON'S BAY COMPANY; RE CJA, LOCAL 93 ..... (June)

563

Bargaining Rights - Accreditation - Abandonment - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Single judge of Divisional Court granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Court dismissing motion to produce various reports and documents - Board bringing motion before panel of Divisional Court to set aside order of single judge - At opening of hearing, respondent moving to have member of the panel disqualified on basis of "apprehended bias" - Respondent's motion dismissed

ELLIS-DON LIMITED; RE OLRB AND I.B.E.W., LOCAL 894 ..... (Jan.)

80

Bargaining Rights - Bargaining Unit - Certification - Cleaning contractor operating at single location within municipality - Union proposing municipal unit, rather than site-specific unit as proposed by employer - Whether section 64.2 of the *Act* should lead Board to change its practice in respect of bargaining unit descriptions - Board finding union's proposed unit appropriate - Certificate issuing

OGDEN ALLIED BUILDING SERVICES INC.; RE LIUNA, LOCAL 1059 ..... (Dec.) 1346

Bargaining Rights - Bargaining Unit - Certification - Security Guards - Union applying to represent employees of security firm - Union urging Board to follow established practice for single location operations of describing bargaining units with reference to the relevant municipality, rather than the specific location where employees work - Security firm's only business activity within municipality at single manufacturing plant - Employer arguing that collective bargaining would be better served if scope of unit were congruent with existing commercial reality - Employer proposing site-specific bargaining unit and submitting that section 64.2 of the *Act* answers any concerns about about fragility of site-specific bargaining rights - Board finding municipal unit appropriate - Certificate issuing

BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE CAW-CANADA ..... (June) 480

Bargaining Rights - Certification - Practice and Procedure - Termination - Timeliness - Union responding to employer application to terminate bargaining rights under section 60 of the *Act* by consenting to Board order terminating bargaining rights - Union applying for certification in respect of same bargaining unit two weeks later - Board rejecting employer's argument that it ought to refuse to entertain union's certification application and that any new certification application should be barred for six months - Certificate issuing

CRANE CANADA INC.; RE LIUNA, LOCAL 247..... (Oct.) 957

Bargaining Rights - Collective Agreement - Construction Industry - Parties - Practice and Procedure - Unfair Labour Practice - Board satisfied that applicants having status to bring complaint and that application ought not to be dismissed on basis of asserted delay - London Construction Association alleging that purported collective agreement between London Concrete Forming Contractors and Labourers' union violating section 148 of the *Act* - Applicant requesting that Board declare agreement to be void as it relates to ICI sector of the construction industry - Ontario Formwork Agreement a product of bargaining relationship specifically exempted from section 148(2) of the *Act* and Board satisfied that impugned agreement binding London Contractors to that agreement - Application dismissed

LONDON AND DISTRICT CONSTRUCTION ASSOCIATION AND LABOUR RELATIONS BUREAU OF THE ONTARIO GENERAL CONTRACTORS ASSOCIATION; RE LIUNA, LOCAL 1059; RE CONCRETE FORMING (1980) LIMITED, ROCKWELL CONCRETE FORMING (LONDON) LIMITED, WALLOY MATERIALS LIMITED, FOREST CITY FORMING LTD., LIDER GENERAL CONSTRUCTION LTD., O.S. CONCRETE FORMING INC., CO-FO CONCRETE FORMING LIMITED ..... (Dec.) 1320

Bargaining Rights - Conciliation - Interim Relief - Reference - Remedies - Union Successor Status - Various locals of RWDSU rejecting proposed merger with UFCW, disaffiliating from RWDSU, amalgamating with each other to form RWDSU/Canada, and merging with with USWA to form Canadian Service Sector Division of USWA - Board in *A & P* case declaring USWA to have acquired rights, privileges and duties of its predecessors - USWA seeking interim order in connection with further 200 pending union successor rights applications - Board declaring USWA to be interim exclusive bargaining agent for employees in bargaining units affected by pending successor rights applications - Board advising Minister of Labour that he may treat USWA as exclusive bargaining agent in respect of affected bargaining units, and may appoint arbitrators and conciliation officers as requested by USWA

notwithstanding assertions made by any other trade union - Board dismissing cross-application for interim relief made by UFCW

THE BAY - KINGSTON, ET AL; RE RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCALS 414, 422, 440, 448, 461, 483, 488, 1000 AND 1688.....(Dec.)

1350

Bargaining Rights - Construction Industry - Interim Relief - Practice and Procedure - Remedies - Unfair Labour Practice - Bricklayers' union Local 2 alleging that Builders Association, Labourers' union and others committing unfair labour practice by, *inter alia*, agreeing to sub-contracting clause in collective agreement between them requiring bricklaying work to be performed by companies bound to agreement with Labourers' union or Bricklayers' union Local 1 - Local 2 requesting that operation of sub-contracting clause be stayed pending resolution of unfair labour practice complaint - Board commenting on lack of particularity and absence of supporting facts establishing first-hand knowledge in declaration filed by Local 2 - Board also noting that interim relief applications may be decided without oral hearings and that parties who fail to provide complete written representations, as required by Rule 86, do so at their peril - Only very discrete core of Local 2's complaint supporting arguable case - Board considering delay in starting proceedings - No obvious reason why harm to Local 2 of denying application outweighing harm to responding parties of staying sub-contracting provision - Application for interim order dismissed

METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION AND LIUNA, LOCAL 183; RE BAC, LOCAL 2; RE METROPOLITAN INDUSTRIAL & COMMERCIAL MASONRY CONTRACTORS INC.; RE MASONRY CONTRACTORS ASSOCIATION OF TORONTO INC.....(Mar.)

219

Bargaining Rights - Construction Industry - Reference - Whether to amend designation orders of Painters' union and/or Labourers' union and/or Insulators' union by adding words "and employees engaged in the removal of asbestos" - Board not persuaded that any or all of the designations should be amended

METROPOLITAN TORONTO DEMOLITION CONTRACTORS ASSOCIATION (THE "CONTRACTORS' ASSOCIATION"), LIUNA (THE "LABOURERS") AND HFIA (THE "INSULATORS"); RE PAT (THE "PAINTERS").....(July)

612

Bargaining Rights - Crown Transfer - Ministry of Correctional Services contracting with several community organizations to provide various services to inmates including discharge planning, cultural liaison, and counselling - Whether each contract constituting transfer of part of Crown's "undertaking" to the community agency - Board not persuaded that the right to perform particular services created by subcontract is "part" of Crown's "undertaking" to which bargaining rights attach or which create successorship on execution of contract - Applications dismissed

ST. LEONARD'S SOCIETY OF METROPOLITAN TORONTO, THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF CORRECTIONAL SERVICES, AND; RE O.P.S.E.U.....(Jan.)

56

Bargaining Rights - Interim Relief - Remedies - Union Successor Status - Alleged predecessor union resisting alleged successor union's application under section 63 of the *Act* claiming that it has bargaining rights for several thousand employees of grocery chain - Board directing that employees at each store to continue to be represented in their dealings with their employer by the individual union representatives who customarily dealt with employment problems prior to July 1993, pending the Board's determination concerning which union

has bargaining rights- Board directing that copies of its decision be provided to all store managers and that copies be posted in each store

NEW DOMINION STORES, A DIVISION OF THE GREAT ATLANTIC AND PACIFIC COMPANY OF CANADA, LIMITED; RE RWDSU, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCAL 414, 422, 440, 461, 1000 AND THE RWDSU, CANADIAN SERVICE SECTOR DIVISION OF THE USWA; RE RWDSU, AFL-CIO-CLC AND ITS LOCAL AFFILIATE RWDSU, AFL-CIO-CLC, LOCAL 414, 429, 545, 579, 582 AND 915 .....(Aug.)

783

Bargaining Rights - Related Employer - Union applying for declaration that staging services company (company A) and company owning Dome stadium (company B) are related employers - Union seeking to bind B to union's collective agreement with A with view to having certain stage hand work sometimes undertaken by B's employees done by unionized employees - Board describing relationship between A and B as that of owner/sub-contractor, not a joint venture - Board concluding that commercial and labour relations situation not revealing "mischief" which section 1(4) of the *Act* was designed to cure - Union not seeking to protect bargaining rights with A, but rather to expand those rights to customer of A - Application dismissed

AINSWORTH ELECTRIC CO. LIMITED AND STADIUM CORPORATION OF ONTARIO LIMITED; RE IATSE, LOCAL 58 ..... (Sept.)

817

Bargaining Rights - Remedies - Sale of a Business - Unfair Labour Practice - Board, in earlier decision, declaring that sale of a business occurred but that bargaining rights terminated and that collective agreement no longer binding - Parties disputing effective date of declaration - Board considering it appropriate to make declaration effective as of date of "sale", as if transaction never occurred, and so directing - Board also ruling on parameters of available relief in connection with earlier finding that employer had violated section 67 of the *Act* - Alternate Chair appointed to meet with parties and assist them in resolving outstanding issues

KITCHENER WATERLOO HOSPITAL; RE ONA; RE GROUP OF EMPLOYEES .....(Mar.)

187

Bargaining Rights - Sale of a Business - All events material to application occurring prior to coming into force on January 1, 1993 of amendments to *Labour Relations Act*, including amendments to section 64 - Board hearing held after January 1, 1993 - Board applying section 64, as it existed prior to amendments, to facts of the case - Responding employer owning and operating retail food store previously owned and operated as retail food store by A & P - Store directly sub-let by A & P to responding employer - Even if result could be said to be expansion of responding employer's existing business, result accomplished through acquisition of part of A & P's business - Transaction constituting sale of business within meaning of the *Act* - Declaration issuing

PENNY LANE FOOD MARKETS LTD.; RE UFCWU, LOCAL 175/633; RE GROUP OF EMPLOYEES .....(Mar.)

230

Bargaining Rights - Union Successor Status - Various locals of RWDSU rejecting proposed merger with UFCW, disaffiliating from RWDSU, amalgamating with each other to form RWDSU/Canada, and merging with USWA to form Canadian Service Sector Division of USWA - Board declaring USWA to have acquired rights, privileges and duties of its predecessors

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED, RE RWDSU, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCAL 414; RE RWDSU, AFL-CIO-CLC AND ITS LOCAL AFFILIATES RWDSU, AFL-CIO-CLC, LOCAL 414, 429, 545, 579, 582, 915 AND 991 ..... (Sept.)

885

- Bargaining Unit - Bargaining Rights - Certification - Cleaning contractor operating at single location within municipality - Union proposing municipal unit, rather than site-specific unit as proposed by employer - Whether section 64.2 of the *Act* should lead Board to change its practice in respect of bargaining unit descriptions - Board finding union's proposed unit appropriate - Certificate issuing
- OGDEN ALLIED BUILDING SERVICES INC.; RE LIUNA, LOCAL 1059 ..... (Dec.) 1346
- Bargaining Unit - Bargaining Rights - Certification - Security Guards - Union applying to represent employees of security firm - Union urging Board to follow established practice for single location operations of describing bargaining units with reference to the relevant municipality, rather than the specific location where employees work - Security firm's only business activity within municipality at single manufacturing plant - Employer arguing that collective bargaining would be better served if scope of unit were congruent with existing commercial reality - Employer proposing site-specific bargaining unit and submitting that section 64.2 of the *Act* answers any concerns about about fragility of site-specific bargaining rights - Board finding municipal unit appropriate - Certificate issuing
- BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE CAW-CANADA ..... (June) 480
- Bargaining Unit - Certification - Bargaining unit agreed upon by parties including 6 lawyers employed in their professional capacity - Union submitting written declarations demonstrating that majority of professionals affected wishing to be included in bargaining unit with other employees - Board finding it appropriate under subsection 6(4.1) of the *Act* to so include them - Certificate issuing
- OMBUDSMAN ONTARIO; RE O.P.E.I.U. .... (Feb.) 147
- Bargaining Unit - Certification - Board reviewing and considering *Mississauga Hospital, South Muskoka Memorial Hospital* and *Strathroy-Middlesex General Hospital* cases - Board finding union's proposed bargaining unit, comprised solely of those employed as registered or graduate nursing assistants, appropriate - Certificate issuing
- WINGHAM AND DISTRICT HOSPITAL; RE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (Sept.) 914
- Bargaining Unit - Certification - Board reviewing and considering *Mississauga Hospital, South Muskoka Memorial Hospital* and *Strathroy-Middlesex General Hospital* cases - Board finding union's proposed bargaining unit, comprised solely of those employed as registered or graduate nursing assistants, appropriate - Certificate issuing
- ENGLEHART & DISTRICT HOSPITAL INC.; RE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (Sept.) 827
- Bargaining Unit - Certification - Charges - Evidence - Intimidation and Coercion - Membership Evidence - Petition - Board relying on section 8(4) of the *Act* and Rule 47 of the Rules of Procedure in declining to receive untimely employee evidence of objection - Employer and objecting employees raising allegations with respect to method of collection of memberships by union - Board declining to inquire into certain matters not sufficiently particularized and determining that other allegations not causing Board to doubt reliability of membership evidence - Board applying *Hospital for Sick Children* test and determining that employees of separate division or department properly falling within applied for bargaining unit - Interim certificate issuing
- SHRADER CANADA LIMITED; RE UNITED STEELWORKERS OF AMERICA; RE GROUP OF EMPLOYEES ..... (Mar.) 246
- Bargaining Unit - Certification - Construction Industry - Employer replying to union's construction industry certification application by taking position that it was not a business in the

construction industry - Union subsequently amending bargaining unit description - Board extending terminal date and re-posting - Board rejecting employer's argument that "application date" should not be when application filed, but rather date on which union acknowledged that it did not pertain to the construction industry and requested change in the bargaining unit description - Certificate issuing

PRECISION ALARMS AND SIGNAL SYSTEMS LIMITED; RE I.B.E.W., LOCAL 120 ..... (Apr.) 381

Bargaining Unit - Certification - Employer employing only full-time employees at time of certification application, but having history of employing students during summer vacation period - Employer having no history of employing part-time students - Union proposing all-employee unit, while employer submitting that students ought to be excluded - Parties disputing effect of section 6(2.1) of the *Act* - Board finding union's proposed unit appropriate - Certificate issuing

GENERAL SIGNAL LIMITED; IBEW, LOCAL 353; RE GROUP OF EMPLOYEES ..... (Nov.) 1141

Bargaining Unit - Certification - Employer in business of providing medical testing and laboratory services - Employer operating 26 locations within Metropolitan Toronto - Union making certification application in respect of employees working at single location - Single location unit held not an appropriate bargaining unit - Application dismissed

MDS HEALTH GROUP LIMITED; RE BREWERY, MALT & SOFT DRINK WORKERS, LOCAL 304 ..... (Sept.) 849

Bargaining Unit - Certification - Employer operating property management business and employing food court staff, maintenance workers, security guards, customer service representatives and child care workers - Union applying for certification and proposing bargaining unit of maintenance and cleaning employees - Employer arguing for all-employee unit - Board concluding that union's proposed unit would result in undue fragmentation and serious problems, not merely inconvenience

SIFTON PROPERTIES LIMITED; RE LIUNA, LOCAL 1059 ..... (Oct.) 1010

Bargaining Unit - Certification - Hospital operating two main sites and various remote clinics - Union seeking to represent unit of paramedical employees at main hospital site and at satellite clinics, but excluding employees at second main site from proposed bargaining unit - Other hospital bargaining units encompassing all sites - Union presenting no evidence of difficulty in organizing employer - Hospital running all sites in integrated fashion - Board concluding that unit applied for not appropriate - Application dismissed

ROYAL OTTAWA HEALTH CARE GROUP/SERVICES DE SANTE ROYAL OTTAWA; RE OPSEU; RE GROUP OF EMPLOYEES ..... (July) 664

Bargaining Unit - Certification - Practical Nurses Federation of Ontario seeking to represent bargaining unit composed of all hospital employees employed in nursing capacity as registered and graduate nursing assistants - Board dismissing prior certification application having found proposed unit of all employees employed as registered and graduate nursing assistants inappropriate - Hospital objecting to proceeding on the basis of *res judicata* - Board viewing application as, in essence, request for re-litigation of issues finally determined by the Board between the parties - Application dismissed

STRATHROY MIDDLESEX GENERAL HOSPITAL; RE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (Feb.) 149

- Bargaining Unit - Certification - Practice and Procedure - Employer failing to file timely reply in accordance with Rules of Procedure - Board not permitting employer at hearing to place in issue whether analysts should be excluded from the bargaining unit - Certificate issuing  
GALLUP CANADA INC.; RE USWA; RE GROUP OF EMPLOYEES .....(Aug.) 750
- Bargaining Unit - Certification - Practice and Procedure - Union amending description of bargaining unit applied for 4 days after application date - Union proposing site specific, rather than municipal unit in amended description - Board reprocessing application in accordance with amended description and extending terminal date - Board dismissing objecting employees' application to reconsider decision to reprocess application - Board rejecting objecting employees' position that amendment constituted new application and that new "application date" be assigned to it - Board rejecting objecting employees' submission that Board's Notice to Employees deficient - Board finding union's proposed unit appropriate  
MICHELIN TIRES (CANADA) LTD.; RE GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, LOCAL N-1; RE GROUP OF EMPLOYEES.....(Nov.) 1157
- Bargaining Unit - Certification - Related Employer - Separate but related plastics manufacturers operating plants in Pickering and in Whitby - Union applying for certification and proposing bargaining unit made up of all employees of first corporate respondent in Whitby - Employer submitting that related manufacturers should be treated as one employer, and that appropriate bargaining unit should include all employees in Regional Municipality of Durham - Board making related employer declaration - Board satisfied that fragmenting employer's highly integrated operation would likely cause serious labour relations problems - Regional Municipality unit found to be appropriate - Application dismissed  
HORNCO PLASTICS INC. AND HORN PLASTICS LTD.; RE ACTWU ..... (May) 411
- Bargaining Unit - Certification - Security Guards - Union's proposed bargaining unit described in terms of regional municipalities or counties - Employer's proposed bargaining unit covering all employees sought by union but described in terms of individual municipalities - Board finding no reason in this case to depart from its usual practice of describing bargaining unit in terms of the municipality in which the workplace(s) is (are) located - Board appointing officer to inquire into parties dispute regarding "employee" status of certain individuals - Union certified on interim basis pending final resolution of matters in dispute between parties  
WACKENHUT OF CANADA LIMITED; RE UNITED STEELWORKERS OF AMERICA .....(Apr.) 393
- Bargaining Unit - Certification - Union and employer agreeing in waiver process to bargaining unit description excluding part-time employees -Subsequently, union requesting amendment of bargaining unit to include part-time employees in accordance with section 6(2.1) of the *Act* - Board not permitting union to resile from its agreement in waiver process and rejecting submission that bargaining unit amendment "required" by the *Act*  
GRANT PAVING & MATERIALS LIMITED; RE IUOE, LOCAL 793; GROUP OF EMPLOYEES ..... (June) 512
- Bargaining Unit - Certification - Union applying for certification and proposing bargaining unit excluding registered nurses - Employer proposing that registered nurses be included in unit - Board seeing no reason to depart from its policy with respect to exclusion of registered nurses from all-employee units in nursing homes - Board satisfied that union's proposed unit viable and would not cause serious labour relations problems - Board finding union's proposed unit appropriate - Certificate issuing  
PROVINCIAL NURSING HOME LIMITED PARTNERSHIP; RE SEU, LOCAL 210 .....(July) 642

- Bargaining Unit - Certification - Union making certification application to represent employees of medical centre - Centre housing 13 doctors, as well as laboratory and x-ray services and employing 18 clerical employees and 8 registered nurses - Union proposing bargaining unit excluding registered nurses - Board finding that overlap in functions of clerical employees and registered nurses in proposed unit likely creating serious labour relations problems - Union's proposed bargaining unit held not appropriate - Application dismissed
- MEDICAL CENTRE HOLDINGS (LEAMINGTON LTD.), RE UFCW, LOCAL 459 ..... (Sept.) 859
- Bargaining Unit - Certification - Whether description of nurses' bargaining unit ought to including phrase "in a nursing capacity" - Whether certain disputed positions should be included in bargaining unit - Board seeing no good reason why traditional description of nurses' bargaining unit should be amended and finding, therefore, that description ought to include phrase "employed in nursing capacity" - Board finding Nurse Clinician, Pharmacy Technician and Discharge Planner positions in the bargaining unit
- PEMBROKE CIVIC HOSPITAL; ONA ..... (Oct.) 995
- Bargaining Unit - Combination of Bargaining Units - For many years, union representing unit of service technicians employed by employer in Toronto - Union newly certified to represent unit of employer's service technicians in and around Sudbury - Union applying to combine bargaining units - Evidence not supporting finding that combination would cause employer serious labour relations problems - Board satisfied that larger bargaining unit in this case making labour relations sense - Board combining the bargaining units and remaining seized with regard to further remedial relief
- PREMARK CANADA INC.; RE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS ..... (June) 540
- Bargaining Unit - Combination of Bargaining Units - Remedies - Union applying to combine hydro facility's office bargaining unit and outside bargaining unit - Board reviewing relevant principles in connection with combination applications - Board also comparing its approach to combining bargaining units to method used by the Board to structure those units at the point of certification - Board concluding that combining units in this case would, to some extent, facilitate viable and stable bargaining and reduce fragmentation without causing serious labour relations problems - Board directing that the two units be combined and remaining seized to deal with any further remedial relief
- MISSISSAUGA HYDRO-ELECTRIC COMMISSION; RE IBEW, LOCAL 636 ... (June) 523
- Bargaining Unit - Combination of Bargaining Units - Remedies - Union representing full-time employees since 1987 - Union recently certified to represent part-time employees and applying to combine bargaining units - Board satisfied that combining units would facilitate viable and stable collective bargaining and reduce fragmentation without causing serious labour relations problems - Board directing that the bargaining units be combined and remaining seized of any issues arising out of implementation of its order
- KINGSTON ACCESS BUS; RE CBRT & GW ..... (July) 610
- Bargaining Unit - Combination of Bargaining Units - Union seeking to combine seven department store bargaining units in southern Ontario - Board considering and applying decision in *Mississauga Hydro* - Shift in union bargaining power flowing from combination order not the kind of serious labour relations problem contemplated by section 7(3) of the *Act* - Board concluding that combining units would reduce fragmentation and facilitate viable and stable collective bargaining without causing serious labour relations problems -

Board directing that bargaining units be combined and remaining seized with regard to further relief

THE HUDSON'S BAY COMPANY; RE RWDSU AFL-CIO-CLC AND ITS LOCAL 1000..... (Oct.)

1042

Bargaining Unit - Employee - Employee Reference - Practice and Procedure - Employer objecting to application under section 108(2) of the *Act* on ground that application relates to persons in positions specifically excluded from bargaining unit - Where Board is satisfied that application under section 108(2) raises real "employee" issue, Board will proceed with it, even where "real" issue is whether that person is in the unless there is a cogent reason not to - Board doubting whether section 108(2) giving Board discretion to refuse to entertain application on basis that "real" issue is something else - Board disagreeing with decisions seeming to suggest that Board determination that person not "employee" not necessarily meaning that that person not in the bargaining unit

LONDON FREE PRESS PRINTING COMPANY LIMITED; RE SOUTHERN ONTARIO NEWSPAPER GUILD LOCAL 87, THE NEWSPAPER GUILD (CLC, AFL-CIO) ..... (Oct.)

977

Build-Up - Adjournment - Certification - Parties - Representation Vote - Sale of a Business - Security Guards - Union making certification application in June 1993 in respect of employees of H - H's contract to provide security services not renewed and W providing those service effective July 1993 - W a successor employer within meaning of section 64.2 of the *Act* - Board permitting W to participate in certification proceeding over union's objection - Board declining to adjourn proceeding to allow union to investigate alleged "freeze" violation by W - Number of positions in bargaining unit increasing from 11 on certification application date to 13 on date of hearing - Board ruling that "build-up" principle not applicable in this case - W and H asking Board to direct representation vote on basis of change in composition of bargaining unit since application date - Employees at work on application date sufficiently representative of work force on hearing date that Board finding it appropriate to determine application based on assessment of wishes of those employees without representation vote - Interim certificate issuing

HAWK SECURITY SYSTEMS LTD.; RE USWA; RE WAKENHUT OF CANADA LIMITED.....(Aug.)

751

Certification - Charges - Intimidation and Coercion - Membership Evidence - Practice and Procedure - Following making of union's certification application, employee alleging forgery on one of cards submitted with application - Union investigating and seeking to withdraw application - Union making subsequent certification application and requesting that Board transfer some of membership evidence filed in first application to subsequent application - Employer wishing membership evidence collected in first application to be declared of no value and seeking to have its allegations of intimidation heard - Employer also seeking bar on future certification applications - Board permitting first application to be withdrawn without imposing bar - Employer free to pursue allegations of intimidation in subsequent certification application

CIRCLET FOOD INC.; RE USWA ..... (May)

406

Certification - Abandonment - Bargaining Rights - Construction Industry - Timeliness - Certification applications brought by Bricklayers' union and Labourers' union barred by collective agreement between City and CUPE - Board satisfied that CUPE collective agreement applying to groups of employees whom applicants seeking to represent - Board rejecting alternative argument that CUPE abandoned bargaining rights with respect to employees covered by certification applications - Applications dismissed

CORPORATION OF THE OF CITY OF ST. THOMAS; RE BAC, LOCAL 5; RE CUPE..... (May)

408

Certification - Adjournment - Build-Up - Parties - Representation Vote - Sale of a Business - Security Guards - Union making certification application in June 1993 in respect of employees of H - H's contract to provide security services not renewed and W providing those services effective July 1993 - W a successor employer within meaning of section 64.2 of the *Act* - Board permitting W to participate in certification proceeding over union's objection - Board declining to adjourn proceeding to allow union to investigate alleged "freeze" violation by W - Number of positions in bargaining unit increasing from 11 on certification application date to 13 on date of hearing - Board ruling that "build-up" principle not applicable in this case - W and H asking Board to direct representation vote on basis of change in composition of bargaining unit since application date - Employees at work on application date sufficiently representative of work force on hearing date that Board finding it appropriate to determine application based on assessment of wishes of those employees without representation vote - Interim certificate issuing

HAWK SECURITY SYSTEMS LTD.; RE USWA; RE WAKENHUT OF CANADA LIMITED.....(Aug.)

751

Certification - Adjournment - Charter of Rights and Freedoms - Constitutional Law - Evidence - Natural Justice - Practice and Procedure - Representation Vote - Board declining to hear objecting employees' Charter argument where notice not given to Attorney-General - Board declining to adjourn hearing so that notice to Attorney-General could be given - Board applying *Hemlo Gold Mines* case and affirming that "application date" in section 8(4) of the *Act* means date on which application is filed and holding that this interpretation involves no denial of natural justice - Board declining to hear employees' *viva voce* evidence in connection with discretion to order representation vote - Board's discretion under section 8(3) of the *Act* should be exercised in way that recognizes that statutory scheme based primarily on documentary evidence of membership - Proffered evidence would not affect Board's of discretion in circumstances of this case

SHAW INDUSTRIES LTD. C.O.B. AS CANUSA (A DIVISION OF SHAW INDUSTRIES LTD.); RE IWA - CANADA; RE GROUP OF EMPLOYEES.....(Aug.)

798

Certification - Bargaining Rights - Bargaining Unit - Cleaning contractor operating at single location within municipality - Union proposing municipal unit, rather than site-specific unit as proposed by employer - Whether section 64.2 of the *Act* should lead Board to change its practice in respect of bargaining unit descriptions - Board finding union's proposed unit appropriate - Certificate issuing

OGDEN ALLIED BUILDING SERVICES INC.; RE LIUNA, LOCAL 1059 ..... (Dec.)

1346

Certification - Bargaining Rights - Bargaining Unit - Security Guards - Union applying to represent employees of security firm - Union urging Board to follow established practice for single location operations of describing bargaining units with reference to the relevant municipality, rather than the specific location where employees work - Security firm's only business activity within municipality at single manufacturing plant - Employer arguing that collective bargaining would be better served if scope of unit were congruent with existing commercial reality - Employer proposing site-specific bargaining unit and submitting that section 64.2 of the *Act* answers any concerns about about fragility of site-specific bargaining rights - Board finding municipal unit appropriate - Certificate issuing

BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE CAW-CANADA ..... (June)

480

Certification - Bargaining Rights - Practice and Procedure - Termination - Timeliness - Union responding to employer application to terminate bargaining rights under section 60 of the *Act* by consenting to Board order terminating bargaining rights - Union applying for certification in respect of same bargaining unit two weeks later - Board rejecting employer's argu-

- ment that it ought to refuse to entertain union's certification application and that any new certification application should be barred for six months - Certificate issuing
- CRANE CANADA INC.; RE LIUNA, LOCAL 247..... (Oct.) 957
- Certification - Bargaining Unit - Bargaining unit agreed upon by parties including 6 lawyers employed in their professional capacity - Union submitting written declarations demonstrating that majority of professionals affected wishing to be included in bargaining unit with other employees - Board finding it appropriate under subsection 6(4.1) of the *Act* to so include them - Certificate issuing
- OMBUDSMAN ONTARIO; RE O.P.E.I.U. .... (Feb.) 147
- Certification - Bargaining Unit - Board reviewing and considering *Mississauga Hospital, South Muskoka Memorial Hospital* and *Strathroy-Middlesex General Hospital* cases - Board finding union's proposed bargaining unit, comprised solely of those employed as registered or graduate nursing assistants, appropriate - Certificate issuing
- WINGHAM AND DISTRICT HOSPITAL; RE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (Sept.) 914
- Certification - Bargaining Unit - Board reviewing and considering *Mississauga Hospital, South Muskoka Memorial Hospital* and *Strathroy-Middlesex General Hospital* cases - Board finding union's proposed bargaining unit, comprised solely of those employed as registered or graduate nursing assistants, appropriate - Certificate issuing
- ENGLEHART & DISTRICT HOSPITAL INC.; RE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (Sept.) 827
- Certification - Bargaining Unit - Charges - Evidence - Intimidation and Coercion - Membership Evidence - Petition - Board relying on section 8(4) of the *Act* and Rule 47 of the Rules of Procedure in declining to receive untimely employee evidence of objection - Employer and objecting employees raising allegations with respect to method of collection of memberships by union - Board declining to inquire into certain matters not sufficiently particularized and determining that other allegations not causing Board to doubt reliability of membership evidence - Board applying *Hospital for Sick Children* test and determining that employees of separate division or department properly falling within applied for bargaining unit - Interim certificate issuing
- SHRADER CANADA LIMITED; RE UNITED STEELWORKERS OF AMERICA; RE GROUP OF EMPLOYEES ..... (Mar.) 246
- Certification - Bargaining Unit - Construction Industry - Employer replying to union's construction industry certification application by taking position that it was not a business in the construction industry - Union subsequently amending bargaining unit description - Board extending terminal date and re-posting - Board rejecting employer's argument that "application date" should not be when application filed, but rather date on which union acknowledged that it did not pertain to the construction industry and requested change in the bargaining unit description - Certificate issuing
- PRECISION ALARMS AND SIGNAL SYSTEMS LIMITED; RE I.B.E.W., LOCAL 120 ..... (Apr.) 381
- Certification - Bargaining Unit - Employer employing only full-time employees at time of certification application, but having history of employing students during summer vacation period - Employer having no history of employing part-time students - Union proposing all-employee unit, while employer submitting that students ought to be excluded - Parties disput-

ing effect of section 6(2.1) of the *Act* - Board finding union's proposed unit appropriate - Certificate issuing

GENERAL SIGNAL LIMITED; IBEW, LOCAL 353; RE GROUP OF EMPLOYEES .....(Nov.) 1141

Certification - Bargaining Unit - Employer in business of providing medical testing and laboratory services - Employer operating 26 locations within Metropolitan Toronto - Union making certification application in respect of employees working at single location - Single location unit held not an appropriate bargaining unit - Application dismissed

MDS HEALTH GROUP LIMITED; RE BREWERY, MALT & SOFT DRINK WORKERS, LOCAL 304 ..... (Sept.) 849

Certification - Bargaining Unit - Employer operating property management business and employing food court staff, maintenance workers, security guards, customer service representatives and child care workers - Union applying for certification and proposing bargaining unit of maintenance and cleaning employees - Employer arguing for all-employee unit - Board concluding that union's proposed unit would result in undue fragmentation and serious problems, not merely inconvenience

SIFTON PROPERTIES LIMITED; RE LIUNA, LOCAL 1059 ..... (Oct.) 1010

Certification - Bargaining Unit - Hospital operating two main sites and various remote clinics - Union seeking to represent unit of paramedical employees at main hospital site and at satellite clinics, but excluding employees at second main site from proposed bargaining unit - Other hospital bargaining units encompassing all sites - Union presenting no evidence of difficulty in organizing employer - Hospital running all sites in integrated fashion - Board concluding that unit applied for not appropriate - Application dismissed

ROYAL OTTAWA HEALTH CARE GROUP/SERVICES DE SANTE ROYAL OTTAWA; RE OPSEU; RE GROUP OF EMPLOYEES ..... (July) 664

Certification - Bargaining Unit - Practical Nurses Federation of Ontario seeking to represent bargaining unit composed of all hospital employees employed in nursing capacity as registered and graduate nursing assistants - Board dismissing prior certification application having found proposed unit of all employees employed as registered and graduate nursing assistants inappropriate - Hospital objecting to proceeding on the basis of *res judicata* - Board viewing application as, in essence, request for re-litigation of issues finally determined by the Board between the parties - Application dismissed

STRATHROY MIDDLESEX GENERAL HOSPITAL; RE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (Feb.) 149

Certification - Bargaining Unit - Practice and Procedure - Employer failing to file timely reply in accordance with Rules of Procedure - Board not permitting employer at hearing to place in issue whether analysts should be excluded from the bargaining unit - Certificate issuing

GALLUP CANADA INC.; RE USWA; RE GROUP OF EMPLOYEES .....(Aug.) 750

Certification - Bargaining Unit - Practice and Procedure - Union amending description of bargaining unit applied for 4 days after application date - Union proposing site specific, rather than municipal unit in amended description - Board reprocessing application in accordance with amended description and extending terminal date - Board dismissing objecting employees' application to reconsider decision to reprocess application - Board rejecting objecting employees' position that amendment constituted new application and that new "application date" be assigned to it - Board rejecting objecting employees' submission that Board's Notice to Employees deficient - Board finding union's proposed unit appropriate

MICHELIN TIRES (CANADA) LTD.; RE GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, LOCAL N-1; RE GROUP OF EMPLOYEES .....(Nov.) 1157

- Certification - Bargaining Unit - Related Employer - Separate but related plastics manufacturers operating plants in Pickering and in Whitby - Union applying for certification and proposing bargaining unit made up of all employees of first corporate respondent in Whitby - Employer submitting that related manufacturers should be treated as one employer, and that appropriate bargaining unit should include all employees in Regional Municipality of Durham - Board making related employer declaration - Board satisfied that fragmenting employer's highly integrated operation would likely cause serious labour relations problems - Regional Municipality unit found to be appropriate - Application dismissed  
 HORNCO PLASTICS INC. AND HORN PLASTICS LTD.; RE ACTWU ..... (May) 411
- Certification - Bargaining Unit - Security Guards - Union's proposed bargaining unit described in terms of regional municipalities or counties - Employer's proposed bargaining unit covering all employees sought by union but described in terms of individual municipalities - Board finding no reason in this case to depart from its usual practice of describing bargaining unit in terms of the municipality in which the workplace(s) is (are) located - Board appointing officer to inquire into parties dispute regarding "employee" status of certain individuals - Union certified on interim basis pending final resolution of matters in dispute between parties  
 WACKENHUT OF CANADA LIMITED; RE UNITED STEELWORKERS OF AMERICA ..... (Apr.) 393
- Certification - Bargaining Unit - Union and employer agreeing in waiver process to bargaining unit description excluding part-time employees - Subsequently, union requesting amendment of bargaining unit to include part-time employees in accordance with section 6(2.1) of the *Act* - Board not permitting union to resile from its agreement in waiver process and rejecting submission that bargaining unit amendment "required" by the *Act*  
 GRANT PAVING & MATERIALS LIMITED; RE IUOE, LOCAL 793; GROUP OF EMPLOYEES ..... (June) 512
- Certification - Bargaining Unit - Union applying for certification and proposing bargaining unit excluding registered nurses - Employer proposing that registered nurses be included in unit - Board seeing no reason to depart from its policy with respect to exclusion of registered nurses from all-employee units in nursing homes - Board satisfied that union's proposed unit viable and would not cause serious labour relations problems - Board finding union's proposed unit appropriate - Certificate issuing  
 PROVINCIAL NURSING HOME LIMITED PARTNERSHIP; RE SEU, LOCAL 210 ..... (July) 642
- Certification - Bargaining Unit - Union making certification application to represent employees of medical centre - Centre housing 13 doctors, as well as laboratory and x-ray services and employing 18 clerical employees and 8 registered nurses - Union proposing bargaining unit excluding registered nurses - Board finding that overlap in functions of clerical employees and registered nurses in proposed unit likely creating serious labour relations problems - Union's proposed bargaining unit held not appropriate - Application dismissed  
 MEDICAL CENTRE HOLDINGS (LEAMINGTON LTD.), RE UFCW, LOCAL 459 ..... (Sept.) 859
- Certification - Bargaining Unit - Whether description of nurses' bargaining unit ought to include phrase "in a nursing capacity" - Whether certain disputed positions should be included in bargaining unit - Board seeing no good reason why traditional description of nurses' bargaining unit should be amended and finding, therefore, that description ought to include phrase "employed in nursing capacity" - Board finding Nurse Clinician, Pharmacy Technician and Discharge Planner positions in the bargaining unit  
 PEMBROKE CIVIC HOSPITAL; ONA ..... (Oct.) 995

Certification - Certification Where Act Contravened - Construction Industry - Discharge - Employer - Interference in Trade Unions - Intimidation and Coercion - Union alleging that when employer learned of certification application, it eliminated all employees known or believed to be union supporters - Parties disputing whether construction company or Indian Band the "employer" - Board finding construction company to be the "employer" and that termination of aggrieved employees tainted by anti-union animus - Union entitled to certification on the basis of membership support in excess of 55 percent and under section 8 of the *Act* - Certificate issuing

GRANT DEVELOPMENT CORPORATION AND/OR THE OJIBWAYS OF PIC RIVER, FIRST NATION (THE PIC 50 - HERON BAY INDIAN BAND); RE L.I.U.N.A., LOCAL 607.....(Jan.)

21

Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Board finding that employer violated the *Act* by laying off two employees and by soliciting and obtaining signatures of employees on anti-union petition - Employer directed to reinstate and compensate employees, to allow union to meet with bargaining unit employees during normal working hours, and to post Board notice in workplace - Board also certifying union under section 9.2 of the *Act*

CMP GROUP (1985) LTD.; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847.....(Dec.)

1247

Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Intimidation and Coercion - Remedies - Unfair Labour Practice - Board finding that employer embarked on scheme of harassment and intimidation of union organizers and supporters and accepting that termination of certain employees motivated by involvement in union organizing campaign - Board satisfied that, as result of employer violations of the *Act*, true wishes of employees unlikely to be ascertained - Board regarding it as unnecessary to consider whether or not union having adequate membership support for collective bargaining, in view of clear direction to the Board in legislature's amendment of section 9.2 of the *Act* - Certificate issuing

CARLETON UNIVERSITY STUDENTS' ASSOCIATION INC.; RE CUPE ..... (Oct.)

938

Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board finding that employer violated *Act* by discharging certain employees and by seeking return of materials provided to employees by the union - Board directing that employees be reinstated with compensation and certifying union under section 9.2 of the *Act* - Board directing that union be permitted to convene meeting of employees on company premises during working hours and directing employer to provide union with list of employees' names, addresses and telephone numbers

ROYAL SHIRT COMPANY LIMITED; RE ACTWU .....(Nov.)

1177

Certification - Charges - Evidence - Intimidation and Coercion - Petition - Practice and Procedure - Witness - Board reviewing principles governing restricted scope of reply evidence and declining to permit employer to split its case by calling one witness to events in dispute during its case in chief, and the other witness during reply - Board concluding that timely petition not a voluntary expression of employee wishes - Board finding no intimidation or other improper conduct by union casting doubt on union's membership evidence - Certificate issuing

TATE ANDALE CANADA INC.; RE UNITED STEELWORKERS OF AMERICA.....(Apr.)

383

Certification - Charges - Membership Evidence - Board certifying union following waiver of hearing by parties - Employer subsequently making "non-sign" allegation - Registrar advising employer that, having investigated allegation, Board seeing no basis for proceeding further

- Employer seeking reasons for Board's decision not to proceed - Board explaining its procedure with respect to "non-sign" or "doubtful signature" investigations and its requirement of *prima facie* case - Revealing basis for Board's conclusion regarding existence of *prima facie* case in any particular case would be inconsistent with confidentiality provisions of the *Act* regarding employee wishes concerning union representation

BILOW'S RACEWAY AUTO PARTS INC.; RE UFCW, LOCAL 175 ..... (May)

397

Certification - Charter of Rights and Freedoms - Constitutional Law - Judicial Review - Natural Justice - Petition - Representation Vote - Group of objecting employees filing "petition" in opposition to union after certification application filing date - Objecting employees asking Board to extend application filing date to allow timely filing of petition, and to conduct certification hearing in Thunder Bay - Objecting employees also challenging constitutional validity of section 8(4) of the *Act* and Rule 47 of the Board's Rules of Procedure, and asserting violation of rules of natural justice - Board dismissing various objecting employees' objections in oral ruling - Objecting employees then seeking to have application dismissed on grounds of reasonable apprehension of bias - Board finding no reasonable apprehension of bias and dismissing motion - Company's request that Board exercise its discretion under section 8(3) of the *Act* to direct representation vote denied - Union enjoying support in excess of 55% in appropriate bargaining unit - Certificate issuing - Divisional Court dismissing objecting employees' judicial review application

HEMLO GOLD MINES INC., USWA AND; RE LAROY MACKENZIE AND WAYNE MACKENZIE ET AL. ALSO KNOWN AS EMPLOYEES OF HEMLO GOLD MINES INC. FOR A DEMOCRATIC CHOICE ..... (May)

471

Certification - Charter of Rights and Freedoms - Constitutional Law - Natural Justice - Petition - Representation Vote - Group of objecting employees filing "petition" in opposition to union after certification application filing date - Objecting employees asking Board to extend application filing date to allow timely filing of petition, and to conduct certification hearing in Thunder Bay - Objecting employees also challenging constitutional validity of section 8(4) of the *Act* and Rule 47 of the Board's Rules of Procedure, and asserting violation of rules of natural justice - Board dismissing various objecting employees' objections in oral ruling - Objecting employees then seeking to have application dismissed on grounds of reasonable apprehension of bias - Board finding no reasonable apprehension of bias and dismissing motion - Company's request that Board exercise its discretion under section 8(3) of the *Act* to direct representation vote denied - Union enjoying support in excess of 55% in appropriate bargaining unit - Certificate issuing

HEMLO GOLD MINES INC.; RE UNITED STEELWORKERS OF AMERICA; RE GROUP OF EMPLOYEES ..... (Mar.)

158

Certification - Collective Agreement - Parties - Reconsideration - Timeliness - Labourers' union seeking reconsideration of decision to grant early termination of collective agreement between CLAC and employer on ground that posting of Notice to Employees was inadequate - Labourers' union filing certification application in what would otherwise have been open period of collective agreement - Labourers' union having sufficient interest to justify granting standing in its own right to seek reconsideration of early termination decision - Board finding posting of Notice to Employees inadequate - Institutional interest of Board in providing adequate notice to affected employees outweighing reliance interest of company and CLAC on finality of Board's early termination decision - Reconsideration application allowed - Upon counting of ballots, Labourers' certification application dismissed

LEDCOR INDUSTRIES LIMITED; RE CHRISTIAN LABOUR ASSOCIATION OF CANADA ..... (Aug.)

758

Certification - Constitutional Law - Employer engaged in, among other things, maintenance and repair of ships - Whether employer's labour relations falling within federal or provincial

jurisdiction - Majority of company's shipping-related sales consisting of repairs performed for ships docked over winter months when ships not in operation - Company's activities not "vital" to core federal undertakings as "operating systems" - Employer's activities generally carried out in autonomous and unintegrated fashion, separate and apart from federal undertakings' ongoing operations - Board concluding that company's operations falling within provincial labour relations jurisdiction - Certificate issuing

KMT TECHNICAL SERVICES, A DIVISION OF 839197 ONTARIO LIMITED; RE U.A. AND THE ONTARIO PIPE TRADES COUNCIL OF THE U.A. .... (Apr.) 344

Certification - Constitutional Law - Employers engaged in decommissioning uranium mine - Whether employers' labour relations within federal or provincial jurisdiction - Mines not operating, employers' activities not involving production, refining or treatment of prescribed substance within meaning of *Atomic Energy Control Act* (A.E.C.A.), and employers' activities not otherwise "works or undertakings" within A.E.C.A. - Board satisfied that employers' labour relations falling within provincial jurisdiction - Certificates granted

RECLAMATION MANAGEMENT CANADA LTD.; IUOE, LOCAL 793 ..... (June) 549

Certification - Constitutional Law - Judicial Review - Board determining that it had no jurisdiction over employees working at nuclear generating stations which were federal undertakings pursuant to the *Constitution Act* and s. 18 of the *Atomic Energy Control Act* - Divisional Court quashing Board decision - Court of Appeal reinstating Board decision and declaring that *Canada Labour Code* applies to Hydro employees employed at nuclear facilities coming under s.18 of the *Atomic Energy Control Act* - Supreme Court of Canada dismissing appeal and confirming order of Court of Appeal reinstating decision of Ontario Labour Relations Board

ONTARIO HYDRO; OLRB, THE SOCIETY OF ONTARIO HYDRO, PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES, CUPE - CLC ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000, THE COALITION TO STOP THE CERTIFICATION OF THE SOCIETY ON BEHALF OF CERTAIN EMPLOYEES, TOMS STEVENS, C.S. STEVENSON, MICHELLE MORRISEY-O'RYAN AND GEORGE ORR; THE ATTORNEY GENERAL OF CANADA; RE THE ATTORNEY GENERAL FOR ONTARIO, THE ATTORNEY GENERAL OF QUEBEC AND THE ATTORNEY GENERAL FOR NEW BRUNSWICK ..... (Oct.) 1072

Certification - Constitutional Law - Security Guard - Employer in business of providing security services to various clients, including various departments and agencies of the federal government - Security service duties including controlling movement of people and material into and out of federal government buildings, reporting suspicious persons, preventing fires, enforcing fire safety standards and administering first aid - Board not persuaded that security services provided integral to core federal undertaking - Board assuming jurisdiction to consider certification application - Certificate issuing

NATIONAL PROTECTIVE SERVICE COMPANY LIMITED; RE UNITED STEELWORKERS OF AMERICA..... (Apr.) 365

Certification - Constitutional Law - Unfair Labour Practice - Employer acting as common carrier engaged in haulage of waste - Employer transporting waste materials on regular and continuous basis to various locations in USA - Board accepting assertion that employer's labour relations falling exclusively within legislative competence of Parliament of Canada - Applications dismissed

BROWNING-FERRIS INDUSTRIES LTD.; RE TEAMSTERS LOCAL UNION NO. 419 ..... (Oct.) 933

Certification - Dependent Contractor - Construction Industry - Judicial Review - Whether certain individuals or entities properly characterized as "employees" or "dependent contracts", or

- as “independent contractors” - Board finding certain entities not dependent on respondent employer and therefore “independent contractors” - Carpentry business run by 2 partners and employing one helper - Whether, by using helper, partners of carpentry business engaging in entrepreneurial activity, such that they are independent contractors - Board finding partners and employee of carpentry business sufficiently dependent on respondent employer as to make it their employer the purposes of the *Act* - Certificates issuing - Divisional Court dismissing employer’s application for judicial review
- ALPA WOOD MOULDINGS COMPANY, A DIVISION OF ALPA LUMBER INC.;  
RE OLRB AND CARPENTERS ALLIED WORKERS, LOCAL 27, C.J.A. .... (Feb.) 154
- Certification - Employee - Dependent Contractor - Whether certain drivers engaged by respondent newspapers dependent contractors or independent contractors - Board noting various features distinguishing drivers from other employees of the respondent newspapers - Drivers held to be independent contractors - Certification applications dismissed
- AJAX/PICKERING NEWS ADVERTISER, METROLAND PRINTING, PUBLISHING AND DISTRIBUTING LIMITED C.O.B. AS; RE RWDSU, AFL/CIO/CLC. (June) 473
- Certification - Employee - Employee Reference - Township’s “Road Superintendent” not exercising managerial functions within meaning of section 1(3) of the *Act* - Certificate issuing
- THE CORPORATION OF THE TOWNSHIP OF LIMERICK; RE IUOE, LOCAL 793 ..... (July) 683
- Certification - Employee - Union seeking to represent bargaining unit of salaried “supervisors” - Whether exercising “managerial functions” within the meaning of s.1(3) of the *Act* - Board weighing various factors, including the number of supervisors in relation to subordinates, the exclusivity of the supervisory function, and the variety of circumstances placing supervisors’ duties and obligations at odds with employees they supervise - Board concluding that supervisors not “employees” within meaning of the *Act* - Application dismissed
- FORD MOTOR COMPANY OF CANADA LIMITED; RE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 880; RE GROUP OF EMPLOYEES ..... (Jan.) 1
- Certification - Evidence - Fraud - Membership Evidence - Union withdrawing earlier certification application after discovering that membership cards submitted to Board had been “pre-witnessed” by in-plant collector - Employer submitting that subsequent certification application “tainted” by continued participation of collector in organizing campaign - Irregularity in collection of membership evidence in first application not constituting “fraud” on the Board - Board finding no reason to doubt reliability of membership evidence filed in subsequent application
- TRANSCOR INC.; RE SEU, LOCAL 183 ..... (Nov.) 1233
- Certification - Practice and Procedure - OSSTF filing certification application after certification application brought by Employees Association, but asking Board to apply subsection 105(3)(a) of the *Act* and to treat its application as having been made on same date as Association’s application - Board viewing subsection 105(3) in light of s.8 of the *Act* as placing greater emphasis on the application that is first in time - Board directing, pursuant to subsection 105(3)(b), that the application filed first should be considered first and that consideration of the subsequently filed application should be postponed pending the disposition of the first
- THE CARLETON BOARD OF EDUCATION; RE CARLETON ADMINISTRATION SUPPORT CERTIFIED EMPLOYEES ASSOCIATION ..... (Feb.) 102
- Certification - Practice and Procedure - Union seeking leave to withdraw certification application following emergence of dispute concerning composition of bargaining unit - Board dismiss-

sing application - Union filing subsequent certification application - Employer asking Board to exercise its discretion under section 105(1)(i) to not consider subsequent application or, in the alternative, to direct a representation vote - Board declining employer requests - Board granting interim certification

GENERAL SIGNAL LIMITED; RE IBEW, LOCAL 353; RE GROUP OF EMPLOYEES ..... (June) 509

Certification - Pre-Hearing Vote - Representation Vote - Board's Returning Officer missing first two of three polling times due to snow storm, but parties agreeing to substitute new time for earlier two and voting proceeding - At completion of balloting, parties signing "consent and waiver form" and "certification of conduct of election form" - Incumbent union seeking new vote on ground that new voting time disenfranchised certain employees - Board declining to order second vote - Certificate issuing

ALEXANDRIA SASH & DOOR CO. LIMITED; RE BREWERY, MALT AND SOFT DRINK WORKERS, LOCAL 304; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 ..... (Apr.) 303

Certification - Representation Vote - Security Guards - Union applying to be certified for unit of 1100 guards working at 200 sites within 4 separate municipal regions - Board directing representation vote in agreed-upon voting constituency - Union requesting that employer disclose to it addresses of employees on voters' list - Board directing employer to produce labels containing names and addresses of persons on voters' list and to allow union representatives to attend employer's office with sealed envelopes to be labelled and mailed by representatives of union and employer together - Board directing that all reasonable costs associated with mailing to be borne by union

METROPOL SECURITY SERVICES, BARNES SECURITY SERVICES LIMITED C.O.B. AS; RE USWA ..... (Nov.) 1154

Certification - Sale of a Business - Security Guard - Union applying to represent guards employed by condominium corporation at single location - Security company acquiring contract to provide security services at condominium two weeks later - Security firm already having collective agreement with rival union - Parties agreeing that security company should be named as employer in bargaining unit description - Rival union and employer asserting that collective agreement between them barring certification application - Board deferring consideration of certification application pending filing by interested party of sale of business application under section 64 of the *Act*

MEADOWVALE SECURITY GUARD SERVICES INC.; CANADIAN UNION OF PROFESSIONAL SECURITY-GUARDS; RE THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (CLAC) ..... (Dec.) 1340

Certification Where Act Contravened - Certification - Construction Industry - Discharge - Employer - Interference in Trade Unions - Intimidation and Coercion - Union alleging that when employer learned of certification application, it eliminated all employees known or believed to be union supporters - Parties disputing whether construction company or Indian Band the "employer" - Board finding construction company to be the "employer" and that termination of aggrieved employees tainted by anti-union animus - Union entitled to certification on the basis of membership support in excess of 55 percent and under section 8 of the *Act* - Certificate issuing

GRANT DEVELOPMENT CORPORATION AND/OR THE OJIBWAYS OF PIC RIVER, FIRST NATION (THE PIC 50 - HERON BAY INDIAN BAND); RE L.I.U.N.A., LOCAL 607 ..... (Jan.) 21

Certification Where Act Contravened - Certification - Discharge - Discharge for Union Activity - Board finding that employer violated the *Act* by laying off two employees and by soliciting

and obtaining signatures of employees on anti-union petition - Employer directed to reinstate and compensate employees, to allow union to meet with bargaining unit employees during normal working hours, and to post Board notice in workplace - Board also certifying union under section 9.2 of the Act

CMP GROUP (1985) LTD.; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847..... (Dec.)

1247

Certification Where Act Contravened - Certification - Discharge - Discharge for Union Activity - Intimidation and Coercion - Remedies - Unfair Labour Practice - Board finding that employer embarked on scheme of harassment and intimidation of union organizers and supporters and accepting that termination of certain employees motivated by involvement in union organizing campaign - Board satisfied that, as result of employer violations of the Act, true wishes of employees unlikely to be ascertained - Board regarding it as unnecessary to consider whether or not union having adequate membership support for collective bargaining, in view of clear direction to the Board in legislature's amendment of section 9.2 of the Act - Certificate issuing

CARLETON UNIVERSITY STUDENTS' ASSOCIATION INC.; RE CUPE ..... (Oct.)

938

Certification Where Act Contravened - Certification - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board finding that employer violated Act by discharging certain employees and by seeking return of materials provided to employees by the union - Board directing that employees be reinstated with compensation and certifying union under section 9.2 of the Act - Board directing that union be permitted to convene meeting of employees on company premises during working hours and directing employer to provide union with list of employees' names, addresses and telephone numbers

ROYAL SHIRT COMPANY LIMITED; RE ACTWU ..... (Nov.)

1177

Change in Working Conditions - Construction Industry - Duty to Bargain in Good Faith - Remedies - Unfair Labour Practice - Employer violating "statutory freeze" in failing to contact union office when it needed new employees and in failing to pay wages and benefits required by collective agreement - Employer directed to compensate union on behalf of its members - Employer operating entirely outside terms of agreement during period of bargaining - Employer failing to make every reasonable effort to make a collective agreement - In circumstances of this case, however, Board preferring to allow bargaining process to continue rather than to impose settlement on the parties under section 91(4)(d) of the Act - Parties directed to meet and bargain in good faith

GENERAL WOOD PRODUCTS; RE CJA, LOCAL 1072 ..... (July)

597

Change in Working Conditions - Damages - *Hospital Labour Disputes Arbitration Act* - Remedies - Unfair Labour Practice - Board determining and declaring that certain scheduling changes affecting job sharing arrangements violating statutory "freeze" - Board declining to direct employer to restore previous work schedules in view of collective agreement made by parties subsequent to filing complaint, but directing that affected employees be compensated according to formula set out in decision

OAKVILLE LIFECARE CENTRE; RE ONA ..... (Oct.)

980

Change in Working Conditions - *Hospital Labour Disputes Arbitration Act* - Unfair Labour Practice - Union alleging that employer breaching statutory "freeze" by altering hours of work of employees without its consent - Board satisfied that nothing in collective agreement or long-standing scheduling practice precluding the scheduling changes complained of - Applications dismissed

MOHAWK HOSPITAL SERVICES INC.; RE CUPE, LOCAL 1605..... (Sept.)

873

Change in Working Conditions - Interim Relief - Remedies - Unfair Labour Practice - Union

alleging that school board employers' planned measures regarding taking of vacations breaching statutory freeze - Unions asking Board to make interim order directing employers to permit employees to choose when they will take vacation during July and August - Union not relying on any potential harm beyond difficulty in remedy to individual employees - Union not asserting any effect on wider labour relations context between parties - In absence of broader labour relations considerations, balance of harm not weighing in favour of making interim order - Applications dismissed

LA SECTION CATHOLIQUE DU CONSEIL SCOLAIRE DE LANGUE FRANÇAISE D'OTTAWA-CARLETON; RE ASSOCIATION DES EMPLOYÉS D'OTTAWA-CARLETON (EMPLOYÉS DE BUREAU, DE SECRÉTARIAT ET EMPLOYÉS TECHNIQUES) ..... (Sept.)

844

Change in Working Conditions - *School Board and Teachers Collective Negotiations Act* - Unfair Labour Practice - Whether wages and benefits paid to certain employees in bargaining unit constituting contravention of statutory freeze - Board rejecting argument that grievors were statutory form teachers and not occasional teachers within unit applied for - Employer's alteration of those teachers' terms and conditions violating the *Act* - Complaint allowed and compensation ordered

LEEDS AND GRENVILLE COUNTY BOARD OF EDUCATION; RE O.P.S.T.F. .... (Feb.)

141

Charges - Bargaining Unit - Certification - Evidence - Intimidation and Coercion - Membership Evidence - Petition - Board relying on section 8(4) of the Act and Rule 47 of the Rules of Procedure in declining to receive untimely employee evidence of objection - Employer and objecting employees raising allegations with respect to method of collection of memberships by union - Board declining to inquire into certain matters not sufficiently particularized and determining that other allegations not causing Board to doubt reliability of membership evidence - Board applying *Hospital for Sick Children* test and determining that employees of separate division or department properly falling within applied for bargaining unit - Interim certificate issuing

SHRADER CANADA LIMITED; RE UNITED STEELWORKERS OF AMERICA; RE GROUP OF EMPLOYEES ..... (Mar.)

246

Charges - Certification - Intimidation and Coercion - Membership Evidence - Practice and Procedure - Following making of union's certification application, employee alleging forgery on one of cards submitted with application - Union investigating and seeking to withdraw application - Union making subsequent certification application and requesting that Board transfer some of membership evidence filed in first application to subsequent application - Employer wishing membership evidence collected in first application to be declared of no value and seeking to have its allegations of intimidation heard - Employer also seeking bar on future certification applications - Board permitting first application to be withdrawn without imposing bar - Employer free to pursue allegations of intimidation in subsequent certification application

CIRCLET FOOD INC.; RE USWA ..... (May)

406

Charges - Certification - Evidence - Intimidation and Coercion - Petition - Practice and Procedure - Witness - Board reviewing principles governing restricted scope of reply evidence and declining to permit employer to split its case by calling one witness to events in dispute during its case in chief, and the other witness during reply - Board concluding that timely petition not a voluntary expression of employee wishes - Board finding no intimidation or other improper conduct by union casting doubt on union's membership evidence - Certificate issuing

TATE ANDALE CANADA INC.; RE UNITED STEELWORKERS OF AMERICA ..... (Apr.)

383

Charges - Certification - Membership Evidence - Board certifying union following waiver of hearing by parties - Employer subsequently making "non-sign" allegation - Registrar advising employer that, having investigated allegation, Board seeing no basis for proceeding further - Employer seeking reasons for Board's decision not to proceed - Board explaining its procedure with respect to "non-sign" or "doubtful signature" investigations and its requirement of *prima facie* case - Revealing basis for Board's conclusion regarding existence of *prima facie* case in any particular case would be inconsistent with confidentiality provisions of the *Act* regarding employee wishes concerning union representation

BILOW'S RACEWAY AUTO PARTS INC.; RE UFCW, LOCAL 175 ..... (May)

397

Charter of Rights and Freedoms - Adjournment - Certification - Constitutional Law - Evidence - Natural Justice - Practice and Procedure - Representation Vote - Board declining to hear objecting employees' Charter argument where notice not given to Attorney-General - Board declining to adjourn hearing so that notice to Attorney-General could be given - Board applying *Hemlo Gold Mines* case and affirming that "application date" in section 8(4) of the *Act* means date on which application is filed and holding that this interpretation involves no denial of natural justice - Board declining to hear employees' *viva voce* evidence in connection with discretion to order representation vote - Board's discretion under section 8(3) of the *Act* should be exercised in way that recognizes that statutory scheme based primarily on documentary evidence of membership - Proffered evidence would not affect Board's of discretion in circumstances of this case

SHAW INDUSTRIES LTD. C.O.B. AS CANUSA (A DIVISION OF SHAW INDUSTRIES LTD.); RE IWA - CANADA; RE GROUP OF EMPLOYEES.....(Aug.)

798

Charter of Rights and Freedoms - Certification - Constitutional Law - Judicial Review - Natural Justice - Petition - Representation Vote - Group of objecting employees filing "petition" in opposition to union after certification application filing date - Objecting employees asking Board to extend application filing date to allow timely filing of petition, and to conduct certification hearing in Thunder Bay - Objecting employees also challenging constitutional validity of section 8(4) of the *Act* and Rule 47 of the Board's Rules of Procedure, and asserting violation of rules of natural justice - Board dismissing various objecting employees' objections in oral ruling - Objecting employees then seeking to have application dismissed on grounds of reasonable apprehension of bias - Board finding no reasonable apprehension of bias and dismissing motion - Company's request that Board exercise its discretion under section 8(3) of the *Act* to direct representation vote denied - Union enjoying support in excess of 55% in appropriate bargaining unit - Certificate issuing - Divisional Court dismissing objecting employees' judicial review application

HEMLO GOLD MINES INC., USWA AND; RE LAROY MACKENZIE AND WAYNE MACKENZIE ET AL. ALSO KNOWN AS EMPLOYEES OF HEMLO GOLD MINES INC. FOR A DEMOCRATIC CHOICE ..... (May)

471

Charter of Rights and Freedoms - Certification - Constitutional Law - Natural Justice - Petition - Representation Vote - Group of objecting employees filing "petition" in opposition to union after certification application filing date - Objecting employees asking Board to extend application filing date to allow timely filing of petition, and to conduct certification hearing in Thunder Bay - Objecting employees also challenging constitutional validity of section 8(4) of the *Act* and Rule 47 of the Board's Rules of Procedure, and asserting violation of rules of natural justice - Board dismissing various objecting employees' objections in oral ruling - Objecting employees then seeking to have application dismissed on grounds of reasonable apprehension of bias - Board finding no reasonable apprehension of bias and dismissing motion - Company's request that Board exercise its discretion under section 8(3)

of the *Act* to direct representation vote denied - Union enjoying support in excess of 55% in appropriate bargaining unit - Certificate issuing

HEMLO GOLD MINES INC.; RE UNITED STEELWORKERS OF AMERICA; RE GROUP OF EMPLOYEES ..... (Mar.) 158

Charter of Rights and Freedoms - Constitutional Law - Practice and Procedure - Stay - Unfair Labour Practice - Board earlier setting matter down for hearing to receive parties' submissions on Board's jurisdiction to hear and decide complaint in light of court order under *Companies' Creditors' Arrangement Act* (CCAA) - Board reserving decision after hearing union's arguments regarding effect of *Charter of Rights and Freedoms* on order under CCAA

LANDAWN SHOPPING CENTRES LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA)..... (Dec.) 1318

Charter of Rights and Freedoms - Constitutional Law - Practice and Procedure - Stay - Unfair Labour Practice - Board earlier setting matter down for hearing to receive parties' submissions on Board's jurisdiction to hear and decide complaint in light of court order under *Companies' Creditors' Arrangement Act* (CCAA) - Board reserving decision after hearing union's arguments regarding effect of *Charter of Rights and Freedoms* on order under CCAA

LANDAWN SHOPPING CENTRES LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA)..... (Dec.) 1318

Collective Agreement - Abandonment - Accreditation - Bargaining Rights - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Single judge of Divisional Court granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Court dismissing motion to produce various reports and documents - Board bringing motion before panel of Divisional Court to set aside order of single judge - At opening of hearing, respondent moving to have member of the panel disqualified on basis of "apprehended bias" - Respondent's motion dismissed

ELLIS-DON LIMITED; RE OLRB AND I.B.E.W., LOCAL 894 ..... (Jan.) 80

Collective Agreement - Bargaining Rights - Construction Industry - Parties - Practice and Procedure - Unfair Labour Practice - Board satisfied that applicants having status to bring complaint and that application ought not to be dismissed on basis of asserted delay - London Construction Association alleging that purported collective agreement between London Concrete Forming Contractors and Labourers' union violating section 148 of the *Act* - Applicant requesting that Board declare agreement to be void as it relates to ICI sector of the construction industry - Ontario Formwork Agreement a product of bargaining relationship specifically exempted from section 148(2) of the *Act* and Board satisfied that impugned agreement binding London Contractors to that agreement - Application dismissed

LONDON AND DISTRICT CONSTRUCTION ASSOCIATION AND LABOUR RELATIONS BUREAU OF THE ONTARIO GENERAL CONTRACTORS ASSOCIATION; RE LIUNA, LOCAL 1059; RE CONCRETE FORMING (1980) LIMITED, ROCKWELL CONCRETE FORMING (LONDON) LIMITED, WALLOY MATERIALS LIMITED, FOREST CITY FORMING LTD., LIDER GENERAL CONSTRUC-

TION LTD., O.S. CONCRETE FORMING INC., CO-FO CONCRETE FORMING LIMITED.....	(Dec.)	1320
Collective Agreement - Certification - Parties - Reconsideration - Timeliness - Labourers' union seeking reconsideration of decision to grant early termination of collective agreement between CLAC and employer on ground that posting of Notice to Employees was inadequate - Labourers' union filing certification application in what would otherwise have been open period of collective agreement - Labourers' union having sufficient interest to justify granting standing in its own right to seek reconsideration of early termination decision - Board finding posting of Notice to Employees inadequate - Institutional interest of Board in providing adequate notice to affected employees outweighing reliance interest of company and CLAC on finality of Board's early termination decision - Reconsideration application allowed - Upon counting of ballots, Labourers' certification application dismissed		
LEDCOR INDUSTRIES LIMITED; RE CHRISTIAN LABOUR ASSOCIATION OF CANADA .....	(Aug.)	758
Collective agreement - Duty to Bargain in Good Faith - Interference with Trade Unions - Final Offer Vote - Unfair Labour Practice - Employer final offer containing duration clause of June 30, 1993 to July 1, 1993 - Final offer vote under section 40 the <i>Act</i> taking place in December 1992 resulting in acceptance by employees - Union refusing to execute offer - Union asking Board to direct extension of duration clause contained in final offer to one year from date of final offer vote and to require execution of collective agreement bearing that term - Union's application dismissed		
PEACOCK LUMBER LTD.; RE RWDSU, AFL-CIO-CLC .....	(July)	633
Collective Agreement - Reference - Settlement - Minister of Labour referring question to Board as to existence of collective agreement between the parties - Union acknowledging signed memorandum of settlement as well as ratification by members, but asserting that in absence of written notification to employer of ratification, settlement not elevated to status of collective agreement - Written notice of ratification not required - Board advising Minister that collective agreement in effect between the parties		
DDM PLASTICS INC.; RE IAM, LOCAL LODGE 2792.....	(Dec.)	1265
Combination of Bargaining Units - Bargaining Unit - For many years, union representing unit of service technicians employed by employer in Toronto - Union newly certified to represent unit of employer's service technicians in and around Sudbury - Union applying to combine bargaining units - Evidence not supporting finding that combination would cause employer serious labour relations problems - Board satisfied that larger bargaining unit in this case making labour relations sense - Board combining the bargaining units and remaining seized with regard to further remedial relief		
PREMARK CANADA INC.; RE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS .....	(June)	540
Combination of Bargaining Units - Bargaining Unit - Remedies - Union applying to combine hydro facility's office bargaining unit and outside bargaining unit - Board reviewing relevant principles in connection with combination applications - Board also comparing its approach to combining bargaining units to method used by the Board to structure those units at the point of certification - Board concluding that combining units in this case would, to some extent, facilitate viable and stable bargaining and reduce fragmentation without causing serious labour relations problems - Board directing that the two units be combined and remaining seized to deal with any further remedial relief		
MISSISSAUGA HYDRO-ELECTRIC COMMISSION; RE IBEW, LOCAL 636 ...	(June)	523
Combination of Bargaining Units - Bargaining Unit - Remedies - Union representing full-time employees since 1987 - Union recently certified to represent part-time employees and		

applying to combine bargaining units -Board satisfied that combining units would facilitate viable and stable collective bargaining and reduce fragmentation without causing serious labour relations problems - Board directing that the bargaining units be combined and remaining seized of any issues arising out of implementation of its order

KINGSTON ACCESS BUS; RE CBRT & GW .....(July) 610

Combination of Bargaining Units - Bargaining Unit - Union seeking to combine seven department store bargaining units in southern Ontario - Board considering and applying decision in *Mississauga Hydro* - Shift in union bargaining power flowing from combination order not the kind of serious labour relations problem contemplated by section 7(3) of the *Act* - Board concluding that combining units would reduce fragmentation and facilitate viable and stable collective bargaining without causing serious labour relations problems - Board directing that bargaining units be combined and remaining seized with regard to further relief

THE HUDSON'S BAY COMPANY; RE RWDSU AFL-CIO-CLC AND ITS LOCAL 1000..... (Oct.) 1042

Combination of Bargaining Units - Interim Relief - Remedies - Union seeking interim order prohibiting otherwise lawful strikes or lock-outs pending disposition of application to combine bargaining units - Board not finding reasons advanced for order sought sufficient to justify its imposition

THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF OTTAWA; RE IBEW, LOCAL 636 .....(Nov.) 1231

Conciliation - Abandonment - Bargaining Rights - Construction Industry - Evidence - Judicial Review - Strike - Employer asserting that threatened strike unlawful on ground that union had previously abandoned bargaining rights - Threatened strike following timely "notice to bargain", appointment of conciliation officer and issuance of "no board" report - Board declining to inquire into continued existence of bargaining rights in circumstances of this case - Board also not accepting employer's assertion that threatened picketing by union improperly motivated and, therefore, unlawful - Application dismissed - Employer applying for judicial review and seeking to have matter heard before single judge on grounds of urgency - Court not satisfied that matter "urgent" and transferring application to Divisional Court

ASSOCIATED CONTRACTING INC.; RE THE QUEEN IN RIGHT OF ONTARIO (MINISTER OF LABOUR), THE OLRB AND IUOE, LOCAL 793 ..... (Oct.) 1071

Conciliation - Abandonment - Bargaining Rights - Construction Industry - Evidence - Picketing - Strike - Employer asserting that threatened strike unlawful on ground that union had previously abandoned bargaining rights - Threatened strike following timely "notice to bargain", appointment of conciliation officer and issuance of "no board" report - Board declining to inquire into continued existence of bargaining rights in circumstances of this case - Board also not accepting employer's assertion that threatened picketing by union improperly motivated and, therefore, unlawful - Application dismissed

ASSOCIATED CONTRACTING INC.; RE MICHAEL GALLAGHER AND IUOE, LOCAL 793 .....(Nov.) 1117

Conciliation - Bargaining Rights - Interim Relief - Reference - Remedies - Union Successor Status - Various locals of RWDSU rejecting proposed merger with UFCW, disaffiliating from RWDSU, amalgamating with each other to form RWDSU/Canada, and merging with with USWA to form Canadian Service Sector Division of USWA - Board in *A & P* case declaring USWA to have acquired rights, privileges and duties of its predecessors - USWA seeking interim order in connection with further 200 pending union successor rights applications - Board declaring USWA to be interim exclusive bargaining agent for employees in bar-

gaining units affected by pending successor rights applications - Board advising Minister of Labour that he may treat USWA as exclusive bargaining agent in respect of affected bargaining units, and may appoint arbitrators and conciliation officers as requested by USWA notwithstanding assertions made by any other trade union - Board dismissing cross-application for interim relief made by UFCW

THE BAY - KINGSTON, ET AL; RE RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCALS 414, 422, 440, 448, 461, 483, 488, 1000 AND 1688..... (Dec.)

1350

Conciliation - Constitutional Law - Reference - Related Employer - Sale of a Business - Whether labour relations of bus service company offered through local branches at Ajax and Kitchener falling within provincial jurisdiction - Bus service company engaging in "regular and continuous" cross-border charter activity among its various activities - Board finding that bus services offered across the province through local branches constituting core undertaking - Each branch not constituting separate undertaking within constitutional sense - Board advising minister that parties' labour relations falling within federal jurisdiction

CHARTERWAYS TRANSPORTATION LIMITED (AT KITCHENER, ONTARIO); RE LONDON AND DISTRICT SERVICE WORKERS' UNION, LOCAL 220.....(Nov.)

1125

Constitutional Law - Adjournment - Certification - Charter of Rights and Freedoms - Evidence - Natural Justice - Practice and Procedure - Representation Vote - Board declining to hear objecting employees' Charter argument where notice not given to Attorney-General - Board declining to adjourn hearing so that notice to Attorney-General could be given - Board applying *Hemlo Gold Mines* case and affirming that "application date" in section 8(4) of the Act means date on which application is filed and holding that this interpretation involves no denial of natural justice - Board declining to hear employees' *viva voce* evidence in connection with discretion to order representation vote - Board's discretion under section 8(3) of the Act should be exercised in way that recognizes that statutory scheme based primarily on documentary evidence of membership - Proffered evidence would not affect Board's of discretion in circumstances of this case

SHAW INDUSTRIES LTD. C.O.B. AS CANUSA (A DIVISION OF SHAW INDUSTRIES LTD.); RE IWA - CANADA; RE GROUP OF EMPLOYEES.....(Aug.)

798

Constitutional Law - Certification - Charter of Rights and Freedoms - Judicial Review - Natural Justice - Petition - Representation Vote - Group of objecting employees filing "petition" in opposition to union after certification application filing date - Objecting employees asking Board to extend application filing date to allow timely filing of petition, and to conduct certification hearing in Thunder Bay - Objecting employees also challenging constitutional validity of section 8(4) of the Act and Rule 47 of the Board's Rules of Procedure, and asserting violation of rules of natural justice - Board dismissing various objecting employees' objections in oral ruling - Objecting employees then seeking to have application dismissed on grounds of reasonable apprehension of bias - Board finding no reasonable apprehension of bias and dismissing motion - Company's request that Board exercise its discretion under section 8(3) of the Act to direct representation vote denied - Union enjoying support in excess of 55% in appropriate bargaining unit - Certificate issuing - Divisional Court dismissing objecting employees' judicial review application

HEMLO GOLD MINES INC., USWA AND; RE LARROY MACKENZIE AND WAYNE MACKENZIE ET AL. ALSO KNOWN AS EMPLOYEES OF HEMLO GOLD MINES INC. FOR A DEMOCRATIC CHOICE ..... (May)

471

Constitutional Law - Certification - Charter of Rights and Freedoms - Natural Justice - Petition - Representation Vote - Group of objecting employees filing "petition" in opposition to union after certification application filing date - Objecting employees asking Board to extend application filing date to allow timely filing of petition, and to conduct certification

hearing in Thunder Bay - Objecting employees also challenging constitutional validity of section 8(4) of the *Act* and Rule 47 of the Board's Rules of Procedure, and asserting violation of rules of natural justice - Board dismissing various objecting employees' objections in oral ruling - Objecting employees then seeking to have application dismissed on grounds of reasonable apprehension of bias - Board finding no reasonable apprehension of bias and dismissing motion - Company's request that Board exercise its discretion under section 8(3) of the *Act* to direct representation vote denied - Union enjoying support in excess of 55% in appropriate bargaining unit - Certificate issuing

HEMLO GOLD MINES INC.; RE UNITED STEELWORKERS OF AMERICA; RE GROUP OF EMPLOYEES .....(Mar.) 158

Constitutional Law - Certification - Employer engaged in, among other things, maintenance and repair of ships - Whether employer's labour relations falling within federal or provincial jurisdiction - Majority of company's shipping-related sales consisting of repairs performed for ships docked over winter months when ships not in operation - Company's activities not "vital" to core federal undertakings as "operating systems" - Employer's activities generally carried out in autonomous and unintegrated fashion, separate and apart from federal undertakings' ongoing operations - Board concluding that company's operations falling within provincial labour relations jurisdiction - Certificate issuing

KMT TECHNICAL SERVICES, A DIVISION OF 839197 ONTARIO LIMITED; RE U.A. AND THE ONTARIO PIPE TRADES COUNCIL OF THE U.A. ....(Apr.) 344

Constitutional Law - Certification - Employers engaged in decommissioning uranium mine - Whether employers' labour relations within federal or provincial jurisdiction - Mines not operating, employers' activities not involving production, refining or treatment of prescribed substance within meaning of *Atomic Energy Control Act* (*A.E.C.A.*), and employers' activities not otherwise "works or undertakings" within *A.E.C.A.* - Board satisfied that employers' labour relations falling within provincial jurisdiction - Certificates granted

RECLAMATION MANAGEMENT CANADA LTD.; IUOE, LOCAL 793 ..... (June) 549

Constitutional Law - Certification - Judicial Review - Board determining that it had no jurisdiction over employees working at nuclear generating stations which were federal undertakings pursuant to the *Constitution Act* and s. 18 of the *Atomic Energy Control Act* - Divisional Court quashing Board decision - Court of Appeal reinstating Board decision and declaring that *Canada Labour Code* applies to Hydro employees employed at nuclear facilities coming under s.18 of the *Atomic Energy Control Act* - Supreme Court of Canada dismissing appeal and confirming order of Court of Appeal reinstating decision of Ontario Labour Relations Board

ONTARIO HYDRO; OLRB, THE SOCIETY OF ONTARIO HYDRO, PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES, CUPE - CLC ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000, THE COALITION TO STOP THE CERTIFICATION OF THE SOCIETY ON BEHALF OF CERTAIN EMPLOYEES, TOMS STEVENS, C.S. STEVENSON, MICHELLE MORRISEY-O'RYAN AND GEORGE ORR; THE ATTORNEY GENERAL OF CANADA; RE THE ATTORNEY GENERAL FOR ONTARIO, THE ATTORNEY GENERAL OF QUEBEC AND THE ATTORNEY GENERAL FOR NEW BRUNSWICK ..... (Oct.) 1072

Constitutional Law - Certification - Security Guard - Employer in business of providing security services to various clients, including various departments and agencies of the federal government - Security service duties including controlling movement of people and material into and out of federal government buildings, reporting suspicious persons, preventing fires, enforcing fire safety standards and administering first aid - Board not persuaded that

security services provided integral to core federal undertaking - Board assuming jurisdiction to consider certification application - Certificate issuing

NATIONAL PROTECTIVE SERVICE COMPANY LIMITED; RE UNITED STEEL-  
WORKERS OF AMERICA..... (Apr.)

365

Constitutional Law - Certification - Unfair Labour Practice - Employer acting as common carrier engaged in haulage of waste - Employer transporting waste materials on regular and continuous basis to various locations in USA - Board accepting assertion that employer's labour relations falling exclusively within legislative competence of Parliament of Canada - Applications dismissed

BROWNING-FERRIS INDUSTRIES LTD.; RE TEAMSTERS LOCAL UNION NO.  
419 ..... (Oct.)

933

Constitutional Law - Charter of Rights and Freedoms - Practice and Procedure - Stay - Unfair Labour Practice - Board earlier setting matter down for hearing to receive parties' submissions on Board's jurisdiction to hear and decide complaint in light of court order under *Companies' Creditors' Arrangement Act* (CCAA) - Board reserving decision after hearing union's arguments regarding effect of *Charter of Rights and Freedoms* on order under CCAA

LANDAWN SHOPPING CENTRES LIMITED; RE NATIONAL AUTOMOBILE,  
AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF  
CANADA (CAW-CANADA)..... (Dec.)

1318

Constitutional Law - Conciliation - Reference - Related Employer - Sale of a Business - Whether labour relations of bus service company offered through local branches at Ajax and Kitchener falling within provincial jurisdiction - Bus service company engaging in "regular and continuous" cross-border charter activity among its various activities - Board finding that bus services offered across the province through local branches constituting core undertaking - Each branch not constituting separate undertaking within constitutional sense - Board advising minister that parties' labour relations falling within federal jurisdiction

CHARTERWAYS TRANSPORTATION LIMITED (AT KITCHENER, ONTARIO);  
RE LONDON AND DISTRICT SERVICE WORKERS' UNION, LOCAL 220..... (Nov.)

1125

Constitutional Law - Construction Industry - Construction Industry Grievance - Judicial Review - Board dismissing employer's submission that construction of banks within sphere of federal labour relations - Board assuming jurisdiction to deal with grievance - Bank seeking judicial review - Divisional Court finding construction of new bank building to be ordinary construction activity and within provincial jurisdiction - Judicial Review application dismissed - Motion for leave to appeal dismissed by Court of Appeal

TORONTO-DOMINION BANK; RE CJA LOCAL 785, OLRB, ATTORNEY GEN-  
ERAL OF CANADA AND ATTORNEY GENERAL OF ONTARIO ..... (June)

578

Constitutional Law - Reference - Municipal bus operation primarily intraprovincial, but extra-provincial bus transportation services making up continuous and regular part of the operations - Board advising Minister that bus operation's labour relations falling within federal jurisdiction

TRANSIT WINDSOR; RE AMALGAMATED TRANSIT UNION, LOCAL 616... (July)

698

Construction Industry - Abandonment - Bargaining Rights - Certification - Timeliness - Certification applications brought by Bricklayers' union and Labourers' union barred by collective agreement between City and CUPE - Board satisfied that CUPE collective agreement applying to groups of employees whom applicants seeking to represent - Board rejecting

alternative argument that CUPE abandoned bargaining rights with respect to employees covered by certification applications - Applications dismissed

CORPORATION OF THE OF CITY OF ST. THOMAS; RE BAC, LOCAL 5; RE CUPE ..... (May) 408

Construction Industry - Abandonment - Bargaining Rights - Conciliation - Evidence - Judicial Review - Strike - Employer asserting that threatened strike unlawful on ground that union had previously abandoned bargaining rights - Threatened strike following timely "notice to bargain", appointment of conciliation officer and issuance of "no board" report - Board declining to inquire into continued existence of bargaining rights in circumstances of this case - Board also not accepting employer's assertion that threatened picketing by union improperly motivated and, therefore, unlawful - Application dismissed - Employer applying for judicial review and seeking to have matter heard before single judge on grounds of urgency - Court not satisfied that matter "urgent" and transferring application to Divisional Court

ASSOCIATED CONTRACTING INC.; RE THE QUEEN IN RIGHT OF ONTARIO (MINISTER OF LABOUR), THE OLRB AND IUOE, LOCAL 793 ..... (Oct.) 1071

Construction Industry - Abandonment - Bargaining Rights - Conciliation - Evidence - Picketing - Strike - Employer asserting that threatened strike unlawful on ground that union had previously abandoned bargaining rights - Threatened strike following timely "notice to bargain", appointment of conciliation officer and issuance of "no board" report - Board declining to inquire into continued existence of bargaining rights in circumstances of this case - Board also not accepting employer's assertion that threatened picketing by union improperly motivated and, therefore, unlawful - Application dismissed

ASSOCIATED CONTRACTING INC.; RE MICHAEL GALLAGHER AND IUOE, LOCAL 793 ..... (Nov.) 1117

Construction Industry - Abandonment - Bargaining Rights - Construction Industry Grievance - In response to union's grievance, employer submitting that union's bargaining rights did not cover work in construction industry and that bargaining rights, in any event, abandoned - Board finding that union's bargaining rights covering construction industry carpentry work and that bargaining rights not abandoned

THE HUDSON'S BAY COMPANY; RE CJA, LOCAL 93 ..... (June) 563

Construction Industry - Adjournment - Construction Industry Grievance - Interim Relief - Practice and Procedure - Board noting that real dispute concerning geographic jurisdiction and concomitant right to work under applicable ICI provincial agreement of Labourers' union locals 247 and 527 - Board adjourning proceeding and directing filing of detailed pleadings, including complete representations in support of the respective positions - Board issuing interim order under section 45(8) of the *Act* regarding right of certain contractors to assign work to members of locals 247 and 527 pending Board's final determination of grievance

BELLAI BROTHERS LTD.; RE L.I.U.N.A., LOCAL 247; RE L.I.U.N.A., LOCAL 527 ..... (Aug.) 717

Construction Industry - Adjournment - Construction Industry Grievance - Practice and Procedure - Board granting adjournment request made by first responding employer but scheduling continuation dates peremptory to all responding parties - First responding employer directed to reimburse applicants for their share of section 126(4) expenses incurred with respect to adjourned hearing

ONTARIO PAVING CONSTRUCTION LIMITED; RE IUOE, LOCAL 793 ..... (July) 630

Construction Industry - Adjournment - Damages - Discharge - Practice and Procedure - Parties - Remedies - Unfair Labour Practice - Board denying adjournment where request coming in

the form of fax to Board on eve of hearing accompanied by unsatisfactory, two-month old medical certificate - Board satisfied that lay-offs motivated, at least in part, by anti-union *animus* - Owner found personally liable for breaches of the *Act* in addition to breaches of the *Act* committed by corporate respondent - Corporate and individual respondents jointly and severally liable for damages assessed at over \$24,000 payable to union on its own behalf and on behalf of members who grieved

CLASSIC MASONRY INC. AND LOUIS TRINDADE; RE B.A.C., LOCAL 5 ...(Aug.)

721

Construction Industry - Adjournment - Evidence - Judicial Review - Jurisdictional Dispute - Natural Justice - Practice and Procedure - Witness - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to members of Sheet Metal Workers' union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters' union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers' union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists - Carpenters' union applying for judicial review on grounds of alleged denial of natural justice - Sheet Metal Workers' union moving to strike affidavit filed by Carpenters' union in judicial review application - Divisional Court dismissing motion to strike affidavit

VIC WEST STEEL, CJA, LOCAL 1256; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE AND SMW, LOCAL 539; RE ONTARIO SHEET METAL AND AIR HANDLING GROUP .....(Nov.)

1243

Construction Industry - Adjournment - Jurisdictional Dispute - Practice and Procedure - Sector Determination - Board declining to defer complaint to arbitration proceedings under the agreement between Labourers and Carpenters unions - Board denying request to make determination as to which sector of the construction industry the work in dispute falls into before proceeding with the merits of the jurisdictional dispute - Parties directed to file additional material according to timetable set by the Board

ELLIS-DON LIMITED, THE JACKSON-LEWIS COMPANY LIMITED, EASTERN CONSTRUCTION COMPANY LIMITED AND KONVEY CONSTRUCTION LIMITED; RE C.J.A., LOCAL 27, AND L.I.U.N.A., LOCAL 183 ..... (Feb.)

120

Construction Industry - Bargaining Rights - Collective Agreement - Parties - Practice and Procedure - Unfair Labour Practice - Board satisfied that applicants having status to bring complaint and that application ought not to be dismissed on basis of asserted delay - London Construction Association alleging that purported collective agreement between London Concrete Forming Contractors and Labourers' union violating section 148 of the *Act* - Applicant requesting that Board declare agreement to be void as it relates to ICI sector of the construction industry - Ontario Formwork Agreement a product of bargaining relation-

ship specifically exempted from section 148(2) of the *Act* and Board satisfied that impugned agreement binding London Contractors to that agreement - Application dismissed

LONDON AND DISTRICT CONSTRUCTION ASSOCIATION AND LABOUR RELATIONS BUREAU OF THE ONTARIO GENERAL CONTRACTORS ASSOCIATION; RE LIUNA, LOCAL 1059; RE CONCRETE FORMING (1980) LIMITED, ROCKWELL CONCRETE FORMING (LONDON) LIMITED, WALLOY MATERIALS LIMITED, FOREST CITY FORMING LTD., LIDER GENERAL CONSTRUCTION LTD., O.S. CONCRETE FORMING INC., CO-FO CONCRETE FORMING LIMITED ..... (Dec.) 1320

Construction Industry - Bargaining Rights - Interim Relief - Practice and Procedure - Remedies - Unfair Labour Practice - Bricklayers' union Local 2 alleging that Builders Association, Labourers' union and others committing unfair labour practice by, *inter alia*, agreeing to sub-contracting clause in collective agreement between them requiring bricklaying work to be performed by companies bound to agreement with Labourers' union or Bricklayers' union Local 1 - Local 2 requesting that operation of sub-contracting clause be stayed pending resolution of unfair labour practice complaint - Board commenting on lack of particularity and absence of supporting facts establishing first-hand knowledge in declaration filed by Local 2 - Board also noting that interim relief applications may be decided without oral hearings and that parties who fail to provide complete written representations, as required by Rule 86, do so at their peril - Only very discrete core of Local 2's complaint supporting arguable case - Board considering delay in starting proceedings - No obvious reason why harm to Local 2 of denying application outweighing harm to responding parties of staying sub-contracting provision - Application for interim order dismissed

METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION AND LIUNA, LOCAL 183; RE BAC, LOCAL 2; RE METROPOLITAN INDUSTRIAL & COMMERCIAL MASONRY CONTRACTORS INC.; RE MASONRY CONTRACTORS ASSOCIATION OF TORONTO INC. .... (Mar.) 219

Construction Industry - Bargaining Rights - Reference - Whether to amend designation orders of Painters' union and/or Labourers' union and/or Insulators' union by adding words "and employees engaged in the removal of asbestos" - Board not persuaded that any or all of the designations should be amended

METROPOLITAN TORONTO DEMOLITION CONTRACTORS ASSOCIATION (THE "CONTRACTORS' ASSOCIATION"), LIUNA (THE "LABOURERS") AND HFIA (THE "INSULATORS"); RE PAT (THE "PAINTERS") ..... (July) 612

Construction Industry - Bargaining Unit - Certification - Employer replying to union's construction industry certification application by taking position that it was not a business in the construction industry - Union subsequently amending bargaining unit description - Board extending terminal date and re-posting - Board rejecting employer's argument that "application date" should not be when application filed, but rather date on which union acknowledged that it did not pertain to the construction industry and requested change in the bargaining unit description - Certificate issuing

PRECISION ALARMS AND SIGNAL SYSTEMS LIMITED; RE I.B.E.W., LOCAL 120 ..... (Apr.) 381

Construction Industry - Certification - Certification Where Act Contravened - Discharge - Employer - Interference in Trade Unions - Intimidation and Coercion - Union alleging that when employer learned of certification application, it eliminated all employees known or believed to be union supporters - Parties disputing whether construction company or Indian Band the "employer" - Board finding construction company to be the "employer" and that termination of aggrieved employees tainted by anti-union animus - Union entitled to certifi-

cation on the basis of membership support in excess of 55 percent and under section 8 of the *Act* - Certificate issuing

GRANT DEVELOPMENT CORPORATION AND/OR THE OJIBWAYS OF PIC RIVER, FIRST NATION (THE PIC 50 - HERON BAY INDIAN BAND); RE L.I.U.N.A., LOCAL 607.....(Jan.)

21

Construction Industry - Certification - Dependent Contractor - Judicial Review - Whether certain individuals or entities properly characterized as "employees" or "dependent contractors", or as "independent contractors" - Board finding certain entities not dependent on respondent employer and therefore "independent contractors" - Carpentry business run by 2 partners and employing one helper - Whether, by using helper, partners of carpentry business engaging in entrepreneurial activity, such that they are independent contractors - Board finding partners and employee of carpentry business sufficiently dependent on respondent employer as to make it their employer the purposes of the *Act* - Certificates issuing - Divisional Court dismissing employer's application for judicial review

ALPA WOOD MOULDINGS COMPANY, A DIVISION OF ALPA LUMBER INC.; RE OLRB AND CARPENTERS ALLIED WORKERS, LOCAL 27, C.J.A. .... (Feb.)

154

Construction Industry - Change in Working Conditions - Duty to Bargain in Good Faith - Remedies - Unfair Labour Practice - Employer violating "statutory freeze" in failing to contact union office when it needed new employees and in failing to pay wages and benefits required by collective agreement - Employer directed to compensate union on behalf of its members - Employer operating entirely outside terms of agreement during period of bargaining - Employer failing to make every reasonable effort to make a collective agreement - In circumstances of this case, however, Board preferring to allow bargaining process to continue rather than to impose settlement on the parties under section 91(4)(d) of the *Act* - Parties directed to meet and bargain in good faith

GENERAL WOOD PRODUCTS; RE CJA, LOCAL 1072 ..... (July)

597

Construction Industry - Collective Agreement - Abandonment - Accreditation - Bargaining Rights - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Single judge of Divisional Court granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Court dismissing motion to produce various reports and documents - Board bringing motion before panel of Divisional Court to set aside order of single judge - At opening of hearing, respondent moving to have member of the panel disqualified on basis of "apprehended bias" - Respondent's motion dismissed

ELLIS-DON LIMITED; RE OLRB AND I.B.E.W., LOCAL 894 ..... (Jan.)

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Construction Industry - Constitutional Law - Construction Industry Grievance - Judicial Review - Board dismissing employer's submission that construction of banks within sphere of federal labour relations - Board assuming jurisdiction to deal with grievance - Bank seeking judicial review - Divisional Court finding construction of new bank building to be ordinary con-

struction activity and within provincial jurisdiction - Judicial Review application dismissed - motion for leave to appeal dismissed by Court of Appeal

TORONTO-DOMINION BANK; RE CJA LOCAL 785, OLRB, ATTORNEY GENERAL OF CANADA AND ATTORNEY GENERAL OF ONTARIO ..... (June) 578

Construction Industry - Construction Industry Grievance - Board concluding that manufacture and supply of concrete from permanent facility is not work covered by Teamsters' and Operating Engineers' Pipeline Agreement - Grievances dismissed

CUSTOM CONCRETE NORTHERN LTD.; RE I.U.O.E. AND ITS LOCAL 793 (Feb.) 103

Construction Industry - Construction Industry Grievance - Board finding issues concerning administration of pension plan to be arbitrable under terms of the various collective agreements between the parties - Board finding it appropriate for dispute to be determined under provisions of Ontario, rather than Nova Scotia collective agreement and that Board having jurisdiction to determine issue raised in employer's grievance - In view of parties' agreement on merits of grievance, Board finding that Board of Trustees not required to accept contributions to Pension Fund on behalf of employees by employers that are not parties to valid collective agreement

NATIONAL ELEVATOR AND ESCALATOR ASSOCIATION; RE I.U.E.C. AND ITS LOCALS 50, 90 AND 96..... (June) 535

Construction Industry - Construction Industry Grievance - Damages - Judicial Review - Remedies - Employer grieving against union and employee alleging improper claim and receipt of room and board allowance by employee - Employer claiming damages - Nothing in collective agreement giving Board the power to award damages against employee - Board dismissing employer's request for damages, but holding that declaratory relief available - Declaration issuing - Employer seeking judicial review - Divisional Court ruling that Board declined its jurisdiction to consider award of damages against the employee and remitting matter to the Board for its determination

ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION, THE; RE ONTARIO ALLIED CONSTRUCTION TRADES COUNCIL, HFIA, LOCAL 95, JAMES CORD, AND THE OLRB ..... (Mar.) 276

Construction Industry - Construction Industry Grievance - Damages - Jurisdictional Dispute - Remedies - Board earlier deciding jurisdictional dispute in favour of Sheet Metal Workers' union - Union seeking compensatory damages through grievance and arbitration under section 126 of the *Act* - Board determining that collective agreement precluding it from awarding damages in this case involving first time error in assigning work where mark-up meeting had been held - Work not falling within "same employer and same work" exception in collective agreement - Board finding that no damages owed

THE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION, BRUCE NUCLEAR POWER DEVELOPMENT; RE SMW, LOCAL 473..... (Dec.) 1392

Construction Industry - Construction Industry Grievance - Damages - Reconsideration - Remedies - Board earlier finding violation of collective agreement in employer failure to observe mark-up process but making no damage award where union had not proved that it had members available to do the work - Board analyzing principles underlying "lost opportunity" damages and concluding that proof of loss essential to recovery - Union's reconsideration application dismissed

BECHTEL CANADA INC., EPSCA AND; RE SMW, LOCAL 537..... (July) 581

Construction Industry - Construction Industry Grievance - Damages - Remedies - Board earlier finding employer in violation of collective agreement and awarding damages - Board rejecting argument that employer ought to be relieved of its obligations to compensate for dam-

ages arising out of its violation of the collective agreement because it elected to use fewer employees on the job than it was required to pursuant to the terms of the collective agreement - Board rejecting argument that damages ought not to be paid to the union but, rather, directly to members who would have been employed or, alternatively, to union in trust on behalf of those *specific* members - Employer directed to pay quantified damages to union in trust on behalf of its members

E.S. FOX LIMITED; RE IUOE AND ITS LOCAL 793 ..... (Oct.) 970

Construction Industry - Construction Industry Grievance - Damages - Remedies - Employer found in violation of collective agreement in failing to observe mark-up process in assigning disputed work - Union claiming loss of opportunity damages, but not proving that it had members available to do the work - Board declaring violation of agreement but making no damages award

BECHTEL CANADA INC., EPSCA AND; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE AND SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 537 ..... (May) 400

Construction Industry - Construction Industry Grievance - Practice and Procedure - Reconsideration - Party seeking reconsideration not using Form A-47 - Reconsideration request not made within 30 day period specified in Rule 85 and containing nothing prompting Board to grant permission for late filing - Request failing to include complete representations or any submissions which responding party did not have opportunity to raise at hearing preceding decision - Reconsideration application denied

MOHAWK SERVICES; RE B.S.O.I.W. LOCAL 721 ..... (Apr.) 355

Construction Industry - Construction Industry Grievance - Practice and Procedure - Related Employer - Remedies - Responding parties not filing response to application, nor appearing at hearing - Board issuing declaration on the basis of material filed by the union indicating related activities under common control - Board's Rule 19 also permitting Board to deem responding parties to have accepted all facts in the application when responding parties do not file responses as required by the Rules - Related employer liable to pay outstanding amounts under settlement and Board order in previous grievance referral - Board allowing grievance alleging failure to make remittances and awarding damages against both responding parties

LAKERIDGE ACOUSTICS, MALVERN DRYWALL SYSTEMS LTD. AND 950337 ONTARIO INC. C.O.B. AS; RE ONTARIO COUNCIL OF THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 1891 ..... (Feb.) 137

Construction Industry - Construction Industry Grievance - Related Employer - Remedies - Carpenters' union having collective agreement with franchisor - Franchisees entering into agreements with non-union contractors to perform certain renovation work - Board finding that franchisees and franchisor carrying on related activities under common control and direction - Board making single employer declaration, but limiting its application to renovations, including new store construction, agreed to between the responding parties

THE SECOND CUP LTD., AND 953455 ONTARIO LIMITED; RE CJA LOCAL 785 ..... (Oct.) 1060

Construction Industry - Construction Industry Grievance - Remedies - Sheet Metal union and Plumbers' union alleging employer failure to comply with "working agreement" binding employer to collective agreements in "residential sector" - Employer claiming that Sheet Metal collective agreement restricted to specialty contractors and that subcontracting clause in Sheet Metal and in Plumbers' collective agreements not applying to it as a general contractor - Employer also asserting that unions would not have been able to get work on con-

struction site identified in grievance because of bid depository arrangement and that damages should be denied - Board finding collective agreements not restricted to "specialty contractors", that working agreement binding employer to the collective agreements, and that subcontracting clauses effective against employer - Board finding employer in violation of collective agreements

WEST YORK CONSTRUCTION 1984 LTD.; RE SMW, LOCAL 285 ..... (May) 456

Construction Industry - Construction Industry Grievance - Union alleging breach of collective agreement's lay-off procedure - Employer claiming that junior employees retained in employment pursuant to employer's obligation under section 54 of the *Workers' Compensation Act* (WCA) and that compliance with WCA relieving it of *prima facie* breach of collective agreement - WCA providing that section 54 not operating to displace collective agreement seniority provision - Board holding that lay-off procedure in collective agreement a seniority provision within meaning of WCA and that section 54 providing no defence for violation of collective agreement - Grievance allowed

ONTARIO HYDRO AND EPSCA; RE ONTARIO ALLIED CONSTRUCTION TRADES COUNCIL AND CARPENTERS AND ALLIED WORKERS, LOCAL 27, CJA..... (July) 625

Construction Industry - Construction Industry Grievance - Union alleging breach of subcontracting provision of collective agreement - "Cleanup" work in question found to be work in the construction industry and covered by provincial collective agreement - Grievance allowed

ELLIS-DON LIMITED; RE LIUNA, LOCAL 1036 AND LIUNA ..... (July) 589

Construction Industry - Construction Industry Grievance - Union grieving alleged violation of ICI agreement during commissioning phase of EMS and Fire Alarm System at hospital project - Board concluding that commissioning of a system or facility, including the software, is construction work - Any work performed during commissioning phase falling within jurisdiction of IBEW - Grievance allowed

HONEYWELL LIMITED; RE I.B.E.W., LOCAL 353 ..... (Feb.) 128

Construction Industry - Construction Industry Grievance - Work by millwrights on barge found not to be construction work covered by Millwrights' union collective agreement - Operating Engineers' province wide agreement held not restricted in its application to construction industry and applying to work on barge - Millwrights' grievance dismissed and Operating Engineers' grievance allowed

E.S. FOX LIMITED; RE I.U.O.E. AND IT'S LOCAL 793 ..... (Apr.) 321

Construction Industry - Duty of Fair Referral - Parties - Practice and Procedure - Unfair Labour Practice - Business manager neither a necessary nor a proper party - Board granting respondent's motion to dismiss application as against union's business manager - Union's business representative and business manager referring out-of-work members on basis of their subjective and personal opinions of members' qualifications, abilities and interests - Union found to have contravened its own hiring hall working rules and section 70 of the *Act* - Complaint allowed and compensation ordered

STEVEN SHEPPARD; RE BRIAN CHRISTIE, UA, LOCAL 463 ..... (June) 555

Construction Industry - Duty of Fair Referral - Remedies - Unfair Labour Practice - Board previously upholding complaint and reconvening on issue of damages - Board concluding that duty of fair referral complainant owing duty to union to mitigate losses, but not obliged to accept referrals as apprentice to fulfill duty - Board also deciding that damages should be reduced because of complainant's unreasonable delay in filing complaint

JAMES N. KRALL; RE C.J.A., LOCAL 785..... (Jan.) 39

Construction Industry - Duty of Fair Referral - Unfair Labour Practice - Union imposing fine on complainant following trial and conviction - Union refusing to issue referral slip to complainant in response to requested name hire - Union's conduct in a number of respects found to be arbitrary, discriminatory and in bad faith - Board directing that complainant be compensated for losses flowing from violation of the *Act* and remaining seized

MICHAEL A. RANKIN; RE LOCAL 721 OF THE BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS OF AMERICA ..... (July) 644

Construction Industry - Evidence - Jurisdictional Dispute - Practice and Procedure - Labourers' union and Carpenters' union disputing assignment of certain work in context of demolition project - Work in dispute involving erection of wooden hoarding with canopy around site of building to be demolished, with hoarding to remain throughout construction of new building on same site - Board considering how 1986 Labourers' designation to represent "construction labourers" engaged in demolition in ICI sector impacting on work assignment disputes - Board determining that it ought to look initially to demolition project evidence (as opposed to evidence of all types of ICI work) within Board Area in question - Only where this practice evidence is insufficient to enable Board to dispose of matter will Board look to other ICI practice with the Board Area - Board directing that disputed work be assigned to Carpenters' union

DELSAN DEMOLITION LIMITED, CJA, LOCAL 494 AND; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL AND THE LIUNA, LOCAL 625 ..... (Oct.) 963

Construction Industry - Evidence - Jurisdictional Dispute - Practice and Procedure - Reconsideration - Timeliness - Board making final order in jurisdictional dispute complaint following consultation with parties - Labourer's union requesting reconsideration and arguing that Board improperly refused to hear certain evidence, that there was no evidence to support certain findings, and that Board misinterpreted material before it - Board explaining its approach to requests for reconsideration given need for finality in its adjudication - Board also explaining new "consultation" procedure for resolving jurisdictional dispute complaints - Board finding no reason to reconsider its disposition of the complaint - EPSCA's separate reconsideration request dismissed as untimely under Rule 85 and on its merits

ONTARIO HYDRO, EPSCA, LIUNA, LOCAL 1059; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE, SMW, LOCAL 473 ..... (May) 442

Construction Industry - Interim Relief - Practice and Procedure - Related Employer - Remedies - Sale of a Business - Union applying for interim orders directing pre-hearing production of relevant lists and documents - Orders issuing but Board noting that production orders may be made on written and properly particularized requests, including representations, without recourse to section 92.1 of the *Act*

HIGHLAND YORK FLOORING COMPANY LIMITED AND HIGHLAND YORK INTERIORS INC.; RE CARPENTERS AND ALLIED WORKERS, LOCAL 27, CJA ..... (July) 607

Construction Industry - Jurisdictional Complaint - Labourers' union and Carpenters' union disputing assignment of work consisting of releasing, removal and dismantling of formwork built in connection with power plant foundation walls, heat recovery steam generator foundation piers, various machine base foundations, turbine bases and other piers - Board not finding trade agreement relied on by Labourers' to be helpful in deciding dispute - Factors of collective bargaining relationships, skill and ability, and economy and efficiency not clearly favouring either trade - Work in dispute assigned to Carpenters' union

NICHOLLS RADTKE LIMITED, CJA, LOCAL 446; RE LIUNA, LOCAL UNION 1036 ..... (Dec.) 1343

Construction Industry - Jurisdictional Dispute - CUPE and IBEW disputing work assignment

involving installation of fibre optic and twisted pair copper cable at nuclear generating station - Board considering the competing collective agreements, skill and ability of the workforces, employer preference and employer's past practice within the province - Board determining that work should be assigned to IBEW

ONTARIO HYDRO AND CUPE, LOCAL 1000; RE IBEW, LOCAL UNION 1788.....(Nov.) 1167

Construction Industry - Jurisdictional Dispute - Ironworkers' union and Millwrights' union disputing assignment of work in connection with material handling systems - Board satisfied that work in dispute should be assigned to composite crew, consisting of equal members of Ironworkers and Millwrights performing the work functions interchangeably - Board emphasizing that its decision not intended to apply to all "in-plant" construction work

THE STATE GROUP LIMITED, STATE CONTRACTORS INC., MILLWRIGHTS DISTRICT COUNCIL OF ONTARIO, MILLWRIGHTS LOCAL 1244, CJA, ONTARIO ERECTORS ASSOCIATION INCORPORATED, ASSOCIATION OF MILLWRIGHTING CONTRACTORS OF ONTARIO; RE IRONWORKERS' DISTRICT COUNCIL OF ONTARIO AND THE BSOIW, LOCAL 700.....(Dec.) 1397

Construction Industry - Jurisdictional Dispute - Practice and Procedure - Board rejecting Millwrights' union's assertion that jurisdictional dispute ought to be withdrawn or dismissed on basis that there was no longer a "demand" for work in dispute as a result of a settlement between employer and Ironworkers' union - Board dealing with entire chain of disputed work associated with material handling conveyor systems, including tagging, dismantling or disconnecting, the transporting of the dismantled systems, and their installation or reconnection at the new site - Board satisfied that correct assignment was to composite crew consisting of equal numbers of Ironworkers and Millwrights - Order to be binding upon all other jobs undertaken in the future in Board Area #1 - Board declining Ironworkers' request that orders be binding with respect to Board Areas #2 and #3

COMSTOCK CANADA, A DIVISION OF LUNDRIGANS-COMSTOCK LIMITED, MILLWRIGHTS' DISTRICT COUNCIL OF ONTARIO, MILLWRIGHTS, LOCAL 1244, CJA, MILLWRIGHTS, LOCAL 1592, CJA; RE IRONWORKERS' DISTRICT COUNCIL OF ONTARIO AND BSOIW, LOCAL 700.....(Aug.) 740

Construction Industry - Practice and Procedure - Related Employer - Sale of a Business - Responding parties failing to reply to union's applications - Union asking Board to determine application without an oral hearing on the basis of material filed by the union and to deem facts pleaded in the application as having been accepted - Board granting union's request - Related employer declaration issuing

G.B. METALS LIMITED, APRICH ENTERPRISES LTD., ARNOLD GLEN BURSEY; RE IRON WORKERS DISTRICT COUNCIL OF ONTARIO AND THE BSOIW, LOCAL 721 ..... (June) 503

Construction Industry - Related Employer - Sale of a Business - Board rejecting union's submission that certain individual constituting "key person" and that brief tenure of other individual, found to be "key person", constituting contribution of the business or part of the business of predecessor to alleged successor employer - Successor rights application dismissed - Board not satisfied that responding companies operating under common control or direction - Related employer application dismissed

INPLANT CONTRACTORS INC. AND 911846 ONTARIO LIMITED C.O.B. AS FLINT INDUSTRIAL SERVICES AND FLINT RIGGERS AND ERECTORS INC.; RE MILLWRIGHT DISTRICT COUNCIL OF ONTARIO ON ITS OWN BEHALF AND ON BEHALF OF LOCAL 1244..... (May) 421

Construction Industry - Related Employer - Sale of a Business - Responding employers operating

demolition businesses owned by father and son - Board finding no sale of equipment or other commercial transactions between responding employers, but determining that goodwill in effect transferred from father's business to son's business - Board finding sale of a business - Employers also engaged in same business under joint direction or control - Related employer declaration issuing

KEPIC WRECKING INC. AND 963590 ONTARIO INC. C.O.B. AS KEPIC WRECKING; RE LIUNA, LOCAL 837..... (June)

516

Construction Industry - Related Employer - Voluntary Recognition - Board rejecting submission that making related employer declaration would extend, rather than preserve bargaining rights and that voluntary recognition agreement in this case was for a fixed term which ended in April 1992 - Employer cannot enter into collective bargaining relationship on trial or purely time-limited basis - Rule of *contra proferentem* not applying in this case - Board satisfied that no untoward delay by applicants in bringing application and that responding parties not prejudiced by delay - Application granted

WOODSTOCK ROOFING AND SHEET METAL, GREAT NORTH INDUSTRIES INC. AND GNI CONSTRUCTION LTD., #515422 ONTARIO LIMITED, C.O.B. AS; RE ONTARIO SHEET METAL WORKERS' & ROOFERS' CONFERENCE AND SMW, LOCAL 539..... (May)

459

Construction Industry - Sector Determination - Board finding construction of underground concrete water storage tank to be work in the ICI sector of the construction industry, and not in heavy engineering sector or sewer and watermain sector as asserted by Labourers' union - Declaration issuing accordingly

MATHEWS CONTRACTING INC.; RE CJA, LOCAL 18; RE LIUNA ..... (Dec.)

1332

Construction Industry Grievance - Construction Industry - Union grieving alleged violation of ICI agreement during commissioning phase of EMS and Fire Alarm System at hospital project - Board concluding that commissioning of a system or facility, including the software, is construction work - Any work performed during commissioning phase falling within jurisdiction of IBEW - Grievance allowed

HONEYWELL LIMITED; RE I.B.E.W., LOCAL 353 ..... (Feb.)

128

Construction Industry Grievance - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Single judge of Divisional Court granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Court dismissing motion to produce various reports and documents - Board bringing motion before panel of Divisional Court to set aside order of single judge - At opening of hearing, respondent moving to have member of the panel disqualified on basis of "apprehended bias" - Respondent's motion dismissed

ELLIS-DON LIMITED; RE OLRB AND I.B.E.W., LOCAL 894..... (Jan.)

80

Construction Industry Grievance - Abandonment - Bargaining Rights - Construction Industry - In response to union's grievance, employer submitting that union's bargaining rights did not

cover work in construction industry and that bargaining rights, in any event, abandoned - Board finding that union's bargaining rights covering construction industry carpentry work and that bargaining rights not abandoned

THE HUDSON'S BAY COMPANY; RE CJA, LOCAL 93..... (June) 563

Construction Industry Grievance - Adjourment - Construction Industry - Interim Relief - Practice and Procedure - Board noting that real dispute concerning geographic jurisdiction and concomitant right to work under applicable ICI provincial agreement of Labourers' union locals 247 and 527 - Board adjourning proceeding and directing filing of detailed pleadings, including complete representations in support of the respective positions - Board issuing interim order under section 45(8) of the *Act* regarding right of certain contractors to assign work to members of locals 247 and 527 pending Board's final determination of grievance

BELLAI BROTHERS LTD.; RE L.I.U.N.A., LOCAL 247; RE L.I.U.N.A., LOCAL 527 ..... (Aug.) 717

Construction Industry Grievance - Adjourment - Construction Industry - Practice and Procedure - Board granting adjourment request made by first responding employer but scheduling continuation dates peremptory to all responding parties - First responding employer directed to reimburse applicants for their share of section 126(4) expenses incurred with respect to adjourned hearing

ONTARIO PAVING CONSTRUCTION LIMITED; RE IUOE, LOCAL 793 ..... (July) 630

Construction Industry Grievance - Constitutional Law - Construction Industry - Judicial Review - Board dismissing employer's submission that construction of banks within sphere of federal labour relations - Board assuming jurisdiction to deal with grievance - Bank seeking judicial review - Divisional Court finding construction of new bank building to be ordinary construction activity and within provincial jurisdiction - Judicial Review application dismissed - motion for leave to appeal dismissed by Court of Appeal

TORONTO-DOMINION BANK; RE CJA LOCAL 785, OLRB, ATTORNEY GENERAL OF CANADA AND ATTORNEY GENERAL OF ONTARIO ..... (June) 578

Construction Industry Grievance - Construction Industry - Board concluding that manufacture and supply of concrete from permanent facility is not work covered by Teamsters' and Operating Engineers' Pipeline Agreement - Grievances dismissed

CUSTOM CONCRETE NORTHERN LTD.; RE I.U.O.E. AND ITS LOCAL 793 (Feb.) 103

Construction Industry Grievance - Construction Industry - Board finding issues concerning administration of pension plan to be arbitrable under terms of the various collective agreements between the parties - Board finding it appropriate for dispute to be determined under provisions of Ontario, rather than Nova Scotia collective agreement and that Board having jurisdiction to determine issue raised in employer's grievance - In view of parties' agreement on merits of grievance, Board finding that Board of Trustees not required to accept contributions to Pension Fund on behalf of employees by employers that are not parties to valid collective agreement

NATIONAL ELEVATOR AND ESCALATOR ASSOCIATION; RE I.U.E.C. AND ITS LOCALS 50, 90 AND 96..... (June) 535

Construction Industry Grievance - Construction Industry - Damages - Judicial Review - Remedies - Employer grieving against union and employee alleging improper claim and receipt of room and board allowance by employee - Employer claiming damages - Nothing in collective agreement giving Board the power to award damages against employee - Board dismissing employer's request for damages, but holding that declaratory relief available - Declaration issuing - Employer seeking judicial review - Divisional Court ruling that Board

declined its jurisdiction to consider award of damages against the employee and remitting matter to the Board for its determination

ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION, THE; RE ONTARIO ALLIED CONSTRUCTION TRADES COUNCIL, HFIA, LOCAL 95, JAMES CORD, AND THE OLRB .....(Mar.)

276

Construction Industry Grievance - Construction Industry - Damages - Jurisdictional Dispute - Remedies - Board earlier deciding jurisdictional dispute in favour of Sheet Metal Workers' union - Union seeking compensatory damages through grievance and arbitration under section 126 of the *Act* - Board determining that collective agreement precluding it from awarding damages in this case involving first time error in assigning work where mark-up meeting had been held - Work not falling within "same employer and same work" exception in collective agreement - Board finding that no damages owed

THE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION, BRUCE NUCLEAR POWER DEVELOPMENT; RE SMW, LOCAL 473.....(Dec.)

1392

Construction Industry Grievance - Construction Industry - Damages - Reconsideration - Remedies - Board earlier finding violation of collective agreement in employer failure to observe mark-up process but making no damage award where union had not proved that it had members available to do the work - Board analyzing principles underlying "lost opportunity" damages and concluding that proof of loss essential to recovery - Union's reconsideration application dismissed

BECHTEL CANADA INC., EPSCA AND; RE SMW, LOCAL 537.....(July)

581

Construction Industry Grievance - Construction Industry - Damages - Remedies - Board earlier finding employer in violation of collective agreement and awarding damages - Board rejecting argument that employer ought to be relieved of its obligations to compensate for damages arising out of its violation of the collective agreement because it elected to use fewer employees on the job than it was required to pursuant to the terms of the collective agreement - Board rejecting argument that damages ought not to be paid to the union but, rather, directly to members who would have been employed or, alternatively, to union in trust on behalf of those *specific* members - Employer directed to pay quantified damages to union in trust on behalf of its members

E.S. FOX LIMITED; RE IUOE AND ITS LOCAL 793 .....(Oct.)

970

Construction Industry Grievance - Construction Industry - Damages - Remedies - Employer found in violation of collective agreement in failing to observe mark-up process in assigning disputed work - Union claiming loss of opportunity damages, but not proving that it had members available to do the work - Board declaring violation of agreement but making no damages award

BECHTEL CANADA INC., EPSCA AND; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE AND SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 537 .....(May)

400

Construction Industry Grievance - Construction Industry - Practice and Procedure - Reconsideration - Party seeking reconsideration not using Form A-47 - Reconsideration request not made within 30 day period specified in Rule 85 and containing nothing prompting Board to grant permission for late filing - Request failing to include complete representations or any submissions which responding party did not have opportunity to raise at hearing preceding decision - Reconsideration application denied

MOHAWK SERVICES; RE B.S.O.I.W. LOCAL 721.....(Apr.)

355

Construction Industry Grievance - Construction Industry - Practice and Procedure - Related Employer - Remedies - Responding parties not filing response to application, nor appearing

at hearing - Board issuing declaration on the basis of material filed by the union indicating related activities under common control - Board's Rule 19 also permitting Board to deem responding parties to have accepted all facts in the application when responding parties do not file responses as required by the Rules - Related employer liable to pay outstanding amounts under settlement and Board order in previous grievance referral - Board allowing grievance alleging failure to make remittances and awarding damages against both responding parties

LAKERIDGE ACOUSTICS, MALVERN DRYWALL SYSTEMS LTD. AND 950337 ONTARIO INC. C.O.B. AS; RE ONTARIO COUNCIL OF THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 1891..... (Feb.) 137

Construction Industry Grievance - Construction Industry - Related Employer - Remedies - Carpenters' union having collective agreement with franchisor -Franchisees entering into agreements with non-union contractors to perform certain renovation work - Board finding that franchisees and franchisor carrying on related activities under common control and direction - Board making single employer declaration, but limiting its application to renovations, including new store construction, agreed to between the responding parties

THE SECOND CUP LTD., AND 953455 ONTARIO LIMITED; RE CJA LOCAL 785 ..... (Oct.) 1060

Construction Industry Grievance - Construction Industry - Remedies - Sheet Metal union and Plumbers' union alleging employer failure to comply with "working agreement" binding employer to collective agreements in "residential sector" - Employer claiming that Sheet Metal collective agreement restricted to specialty contractors and that subcontracting clause in Sheet Metal and in Plumbers' collective agreements not applying to it as a general contractor - Employer also asserting that unions would not have been able to get work on construction site identified in grievance because of bid depository arrangement and that damages should be denied - Board finding collective agreements not restricted to "specialty contractors", that working agreement binding employer to the collective agreements, and that subcontracting clauses effective against employer - Board finding employer in violation of collective agreements

WEST YORK CONSTRUCTION 1984 LTD.; RE SMW, LOCAL 285 ..... (May) 456

Construction Industry Grievance - Construction Industry - Union alleging breach of collective agreement's lay-off procedure - Employer claiming that junior employees retained in employment pursuant to employer's obligation under section 54 of the *Workers' Compensation Act* (WCA) and that compliance with WCA relieving it of *prima facie* breach of collective agreement - WCA providing that section 54 not operating to displace collective agreement seniority provision - Board holding that lay-off procedure in collective agreement a seniority provision within meaning of WCA and that section 54 providing no defence for violation of collective agreement - Grievance allowed

ONTARIO HYDRO AND EPSCA; RE ONTARIO ALLIED CONSTRUCTION TRADES COUNCIL AND CARPENTERS AND ALLIED WORKERS, LOCAL 27, CJA..... (July) 625

Construction Industry Grievance - Construction Industry - Union alleging breach of subcontracting provision of collective agreement - "Cleanup" work in question found to be work in the construction industry and covered by provincial collective agreement - Grievance allowed

ELLIS-DON LIMITED; RE LIUNA, LOCAL 1036 AND LIUNA ..... (July) 589

Construction Industry Grievance - Construction Industry - Work by millwrights on barge found not to be construction work covered by Millwrights' union collective agreement - Operating Engineers' province wide agreement held not restricted in its application to construction

industry and applying to work on barge - Millwrights' grievance dismissed and Operating Engineers' grievance allowed

E.S. FOX LIMITED; RE I.U.O.E. AND ITS LOCAL 793 ..... (Apr.) 321

Crown Transfer - Bargaining Rights - Ministry of Correctional Services contracting with several community organizations to provide various services to inmates including discharge planning, cultural liaison, and counselling - Whether each contract constituting transfer of part of Crown's "undertaking" to the community agency - Board not persuaded that the right to perform particular services created by subcontract is "part" of Crown's "undertaking" to which bargaining rights attach or which create successorship on execution of contract - Applications dismissed

ST. LEONARD'S SOCIETY OF METROPOLITAN TORONTO, THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF CORRECTIONAL SERVICES, AND; RE O.P.S.E.U. .... (Jan.) 56

Damages - Construction Industry - Construction Industry Grievance - Judicial Review - Remedies - Employer grieving against union and employee alleging improper claim and receipt of room and board allowance by employee - Employer claiming damages - Nothing in collective agreement giving Board the power to award damages against employee - Board dismissing employer's request for damages, but holding that declaratory relief available - Declaration issuing - Employer seeking judicial review - Divisional Court ruling that Board declined its jurisdiction to consider award of damages against the employee and remitting matter to the Board for its determination

ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION, THE; RE ONTARIO ALLIED CONSTRUCTION TRADES COUNCIL, HFIA, LOCAL 95, JAMES CORD, AND THE OLRB ..... (Mar.) 276

Damages - Adjudgment - Construction Industry - Discharge - Practice and Procedure - Parties - Remedies - Unfair Labour Practice - Board denying adjournment where request coming in the form of fax to Board on eve of hearing accompanied by unsatisfactory, two-month old medical certificate - Board satisfied that lay-offs motivated, at least in part, by anti-union *animus* - Owner found personally liable for breaches of the *Act* in addition to breaches of the *Act* committed by corporate respondent - Corporate and individual respondents jointly and severally liable for damages assessed at over \$24,000 payable to union on its own behalf and on behalf of members who grieved

CLASSIC MASONRY INC. AND LOUIS TRINDADE; RE B.A.C., LOCAL 5 ... (Aug.) 721

Damages - Change in Working Conditions - *Hospital Labour Disputes Arbitration Act* - Remedies - Unfair Labour Practice - Board determining and declaring that certain scheduling changes affecting job sharing arrangements violating statutory "freeze" - Board declining to direct employer to restore previous work schedules in view of collective agreement made by parties subsequent to filing complaint, but directing that affected employees be compensated according to formula set out in decision

OAKVILLE LIFECARE CENTRE; RE ONA ..... (Oct.) 980

Damages - Construction Industry - Construction Industry Grievance - Jurisdictional Dispute - Remedies - Board earlier deciding jurisdictional dispute in favour of Sheet Metal Workers' union - Union seeking compensatory damages through grievance and arbitration under section 126 of the *Act* - Board determining that collective agreement precluding it from awarding damages in this case involving first time error in assigning work where mark-up meeting had been held - Work not falling within "same employer and same work" exception in collective agreement - Board finding that no damages owed

THE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION, BRUCE NUCLEAR POWER DEVELOPMENT; RE SMW, LOCAL 473 ..... (Dec.) 1392

- Damages - Construction Industry - Construction Industry Grievance - Reconsideration - Remedies - Board earlier finding violation of collective agreement in employer failure to observe mark-up process but making no damage award where union had not proved that it had members available to do the work - Board analyzing principles underlying "lost opportunity" damages and concluding that proof of loss essential to recovery - Union's reconsideration application dismissed
- BECHTEL CANADA INC., EPSCA AND; RE SMW, LOCAL 537..... (July) 581
- Damages - Construction Industry - Construction Industry Grievance - Remedies - Board earlier finding employer in violation of collective agreement and awarding damages - Board rejecting argument that employer ought to be relieved of its obligations to compensate for damages arising out of its violation of the collective agreement because it elected to use fewer employees on the job than it was required to pursuant to the terms of the collective agreement - Board rejecting argument that damages ought not to be paid to the union but, rather, directly to members who would have been employed or, alternatively, to union in trust on behalf of those *specific* members - Employer directed to pay quantified damages to union in trust on behalf of its members
- E.S. FOX LIMITED; RE IUOE AND ITS LOCAL 793 ..... (Oct.) 970
- Damages - Construction Industry - Construction Industry Grievance - Remedies - Employer found in violation of collective agreement in failing to observe mark-up process in assigning disputed work - Union claiming loss of opportunity damages, but not proving that it had members available to do the work - Board declaring violation of agreement but making no damages award
- BECHTEL CANADA INC., EPSCA AND; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE AND SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 537 ..... (May) 400
- Damages - Discharge - Duty of Fair Representation - Remedies - Unfair Labour Practice - Board earlier finding union in violation of duty of fair representation, but parties failing to agree on appropriate remedy - Reinstatement with compensation for nine months lost wages ordered - In assessing damages, Board not taking into account two-month delay in complaining to Board, but making deduction for failure to adequately mitigate and for complainant's admitted misconduct prior to discharge
- TIM TURNER; RE THE RETAIL, WHOLESALE BAKERY AND CONFECTIONERY WORKERS UNION, LOCAL 461 OF THE R.W.D.S.U. AFL:CIO:CLC AND RICK KENT, ALF DAVIS, GARY SAGE, AB PLAYER; RE WESTON BAKERIES ..... (Aug.) 811
- Damages - Duty to Bargain in Good Faith - Final Offer Vote - Interference in Trade Unions - Judicial Review - Lockout - Natural Justice - Remedies - Unfair Labour Practice - Employer engaging in illegal lockout by transferring bargaining unit work to another company immediately before strike/lockout deadline - Work transfer motivated at least in part by desire to avoid union - Employer breaching duty to bargain in good faith by sending uninformed representatives to bargaining table, by failing to disclose contemplated transfer of work, and by bargaining directly with employees hired to work at other company - Direct bargaining constituting interference in trade union - Employer demand for employee consent to release of addresses for final offer vote constituting interference in trade union - Board ordering employer to cease and desist from violations of Act - Board ordering resumption of bargaining meetings - Board ordering employer to compensate all bargaining unit employees for monetary losses arising out of breaches - Board ordering employer to pay union's negotiating costs - Board ordering employer to return work to original company and make no further movement without disclosure to union - Board ordering employer to provide union with names and addresses of bargaining unit employees as of lockout date

and to advise of additions or changes - Board ordering workplace Notice of Posting signed personally by employer - Board ordering copy of decision to be mailed to all bargaining unit employees - Employer applying for judicial review and submitting that Board exceeded its jurisdiction and breached rules of natural justice - Judicial review application dismissed by Divisional Court

PLAZA FIBREGLAS MANUFACTURING LIMITED, PLAZA ELECTRO-PLATING LTD., CITCOR MANUFACTURING LTD. AND SABINA CITRON; RE: ONTARIO LABOUR RELATIONS BOARD AND UNITED STEELWORKERS OF AMERICA.....(Jan.)

83

Dependent Contractor - Certification - Construction Industry - Judicial Review - Whether certain individuals or entities properly characterized as "employees" or "dependent contractors", or as "independent contractors" - Board finding certain entities not dependent on respondent employer and therefore "independent contractors" - Carpentry business run by 2 partners and employing one helper - Whether, by using helper, partners of carpentry business engaging in entrepreneurial activity, such that they are independent contractors - Board finding partners and employee of carpentry business sufficiently dependent on respondent employer as to make it their employer the purposes of the *Act* - Certificates issuing - Divisional Court dismissing employer's application for judicial review

ALPA WOOD MOULDINGS COMPANY, A DIVISION OF ALPA LUMBER INC.; RE OLRB AND CARPENTERS ALLIED WORKERS, LOCAL 27, C.J.A. .... (Feb.)

154

Dependent Contractor - Employee - Certification - Whether certain drivers engaged by respondent newspapers dependent contractors or independent contractors - Board noting various features distinguishing drivers from other employees of the respondent newspapers - Drivers held to be independent contractors - Certification applications dismissed

AJAX/PICKERING NEWS ADVERTISER, METROLAND PRINTING, PUBLISHING AND DISTRIBUTING LIMITED C.O.B. AS; RE RWDSU, AFL:CIO:CLC. (June)

473

Discharge - Adjourment - Construction Industry - Damages - Practice and Procedure - Parties - Remedies - Unfair Labour Practice - Board denying adjournment where request coming in the form of fax to Board on eve of hearing accompanied by unsatisfactory, two-month old medical certificate - Board satisfied that lay-offs motivated, at least in part, by anti-union *animus* - Owner found personally liable for breaches of the *Act* in addition to breaches of the *Act* committed by corporate respondent - Corporate and individual respondents jointly and severally liable for damages assessed at over \$24,000 payable to union on its own behalf and on behalf of members who grieved

CLASSIC MASONRY INC. AND LOUIS TRINDADE; RE B.A.C., LOCAL 5 ...(Aug.)

721

Discharge - Adjourment - Environmental Protection Act - Evidence - Health and Safety - Practice and Procedure - Settlement - Employer seeking adjournment pending disposition of application in Ontario Court (General Division) for declaration that enforceable settlement entered into by the parties - Adjourment request denied - Board dismissing objection to anticipated evidence of complainant's former counsel - Evidence of communications between solicitors in furtherance of settlement not privileged where existence of agreement constituting issue in dispute - Board finding complaint settled in absence of signed documents confirming settlement and declining to inquire further into complaint

FUJI HUNT PHOTOGRAPHIC CHEMICALS LTD., FUJI PHOTO FILM CANADA INC. AND FUJI PHOTO FILM CO. LTD.; RE FRED NICHOLAS ..... (June)

494

Discharge - Adjustment Plan - Interference in Trade Unions - Interim Relief - Remedies - Unfair Labour Practice - Bargaining unit chairperson discharged some months before scheduled closure of part of employer's plant - Chairperson's discharge grievance being arbitrated, but arbitration proceeding likely to continue beyond closure date - Employer refusing to discuss

adjustment plan with union so long as chairperson included on union's bargaining committee - Union seeking order preventing employer from refusing to allow chairperson to participate as member of union committee negotiating adjustment plan - Employer identifying no significant harm resulting from granting order sought - Board directing employer to cease and desist from refusing to recognize and deal with chairperson as member of union committee, and also to meet with union committee in order that parties may bargain in good faith to make adjustment plan

CROWN FAB DIVISION, THE ALLEN GROUP CANADA, LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 1256 ... (Oct.)

960

Discharge - Certification - Certification Where Act Contravened - Construction Industry - Employer - Interference in Trade Unions - Intimidation and Coercion - Union alleging that when employer learned of certification application, it eliminated all employees known or believed to be union supporters - Parties disputing whether construction company or Indian Band the "employer" - Board finding construction company to be the "employer" and that termination of aggrieved employees tainted by anti-union animus - Union entitled to certification on the basis of membership support in excess of 55 percent and under section 8 of the *Act* - Certificate issuing

GRANT DEVELOPMENT CORPORATION AND/OR THE OJIBWAYS OF PIC RIVER, FIRST NATION (THE PIC 50 - HERON BAY INDIAN BAND); RE L.I.U.N.A., LOCAL 607.....(Jan.)

21

Discharge - Certification - Certification Where Act Contravened - Discharge for Union Activity - Board finding that employer violated the *Act* by laying off two employees and by soliciting and obtaining signatures of employees on anti-union petition - Employer directed to reinstate and compensate employees, to allow union to meet with bargaining unit employees during normal working hours, and to post Board notice in workplace - Board also certifying union under section 9.2 of the *Act*

CMP GROUP (1985) LTD.; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847.....(Dec.)

1247

Discharge - Certification - Certification Where Act Contravened - Discharge for Union Activity - Intimidation and Coercion - Remedies - Unfair Labour Practice - Board finding that employer embarked on scheme of harassment and intimidation of union organizers and supporters and accepting that termination of certain employees motivated by involvement in union organizing campaign - Board satisfied that, as result of employer violations of the *Act*, true wishes of employees unlikely to be ascertained - Board regarding it as unnecessary to consider whether or not union having adequate membership support for collective bargaining, in view of clear direction to the Board in legislature's amendment of section 9.2 of the *Act* - Certificate issuing

CARLETON UNIVERSITY STUDENTS' ASSOCIATION INC.; RE CUPE ..... (Oct.)

938

Discharge - Certification - Certification Where Act Contravened - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board finding that employer violated *Act* by discharging certain employees and by seeking return of materials provided to employees by the union - Board directing that employees be reinstated with compensation and certifying union under section 9.2 of the *Act* - Board directing that union be permitted to convene meeting of employees on company premises during working hours and directing employer to provide union with list of employees' names, addresses and telephone numbers

ROYAL SHIRT COMPANY LIMITED; RE ACTWU .....(Nov.)

1177

Discharge - Damages - Duty of Fair Representation - Remedies - Unfair Labour Practice - Board earlier finding union in violation of duty of fair representation, but parties failing to agree

on appropriate remedy - Reinstatement with compensation for nine months lost wages ordered - In assessing damages, Board not taking into account two-month delay in complaining to Board, but making deduction for failure to adequately mitigate and for complainant's admitted misconduct prior to discharge

TIM TURNER; RE THE RETAIL, WHOLESALE BAKERY AND CONFECTION-  
ERY WORKERS UNION, LOCAL 461 OF THE R.W.D.S.U. AFL:CIO:CLC AND  
RICK KENT, ALF DAVIS, GARY SAGE, AB PLAYER; RE WESTON  
BAKERIES .....(Aug.)

811

Discharge - Discharge for Union Activity - Evidence - Interim Relief - Practice and Procedure - Remedies - Unfair Labour Practice - Board commenting on importance of filing accurate declarations confirmed by persons with first-hand knowledge - Board unwilling to rely on hearsay material - Union alleging that employee discharged for union activity and seeking interim reinstatement with compensation - Employer denying anti-union *animus* and claiming that discharge motivated by employee having lied to management about theft committed by another employee - Board rejecting argument that interim relief power should be used only in rare and exceptional circumstances - Board concluding that complaint and declarations reflecting arguable case on the merits - Board noting chilling effect of discharge on organizing campaign and that union organizing drive a relatively fragile enterprise in which momentum is often critical - Board recognizing potential harm to employer in temporary negative effect on managerial authority and on its policy regarding theft - On balance, harm from granting order held to be less than harm which might flow from not granting it - Board directing interim reinstatement, but declining to award interim compensation

LOEB HIGHLAND, 810048 ONTARIO LIMITED C.O.B. AS; RE UFCW, LOCAL  
175/633.....(Mar.)

197

Discharge - Discharge for Union Activity - Evidence - Interim Relief - Practice and Procedure - Remedies - Unfair Labour Practice - Board commenting on importance of filing accurate declarations confirmed by persons with first-hand knowledge - Board unwilling to rely on hearsay material - Union alleging that employee discharged for union activity and seeking interim reinstatement with compensation - Employer denying anti-union *animus* and claiming that discharge motivated by employee having lied to management about theft committed by another employee - Board rejecting argument that interim relief power should be used only in rare and exceptional circumstances - Board concluding that complaint and declarations reflecting arguable case on the merits - Board noting chilling effect of discharge on organizing campaign and that union organizing drive a relatively fragile enterprise in which momentum is often critical - Board recognizing potential harm to employer in temporary negative effect on managerial authority and on its policy regarding theft - On balance, harm from granting order held to be less than harm which might flow from not granting it - Board directing interim reinstatement, but declining to award interim compensation

LOEB HIGHLAND, 810048 ONTARIO LIMITED C.O.B. AS; RE UFCW, LOCAL  
175/633.....(Apr.)

354

Discharge - Discharge for Union Activity - Evidence - Practice and Procedure - Unfair Labour Practice - Employer claiming that employee discharged for having lied to management about theft committed by another employee - Union objecting to introduction of evidence about "similar incident" involving other employee on ground that it pertained to material fact which had not been set out in employer's response - Board relying on Rule 20 of Board's Rules of Procedure to uphold objection - Discharge tainted by anti-union *animus* - Board finding that employer violated the Act when it met with employee to discuss his organizing activities and when the employee was discharged - Reinstatement with compensation ordered

LOEB IGA HIGHLAND, 810048 ONTARIO LTD. C.O.B. AS; RE UFCW, LOCAL  
175/633.....(Mar.)

208

Discharge - Discharge for Union Activity - Interference in Trade Unions - Intimidation and Coercion - Unfair Labour Practice - Remedies - Board finding lay-offs partly or wholly motivated by anti-union sentiment and that Act violated when employer threatened to close plant if union came in - Complaint allowed - Reinstatement with compensation ordered - Employer also directed to mail Board notices to bargaining unit members at their homes BARTON FEEDERS INC.; RE U.F.C.W., LOCAL 633 ..... (Feb.)	89
Discharge - Discharge for Union Activity - Interim Relief - Practice and Procedure - Remedies - Unfair Labour Practice - Whether declarations filed by the parties deficient - Board noting that where the only support for a critical aspect of a party's case is a hearsay portion of a declaration, the Board may attach little or no weight to that portion of the declaration - Whether to reinstate union organizers accused by employer of theft pending final disposition of unfair labour practice complaint - Potential labour relations harm sought to be avoided by union significantly greater than potential harm to employer of temporary reinstatement - Interim reinstatement ordered EAST SIDE MARIO'S, 988421 ONTARIO INC. C.O.B. AS; U.F.C.W., LOCAL 175/633.....(Aug.)	744
Discharge - Discharge for Union Activity - Interim Relief - Remedies - Unfair Labour Practice - Board directing employer to reinstate employees on an interim basis pending disposition of their unfair labour practice discharge complaint - Employer also directed to post Board notice in workplace and to provide copies of notice to employees affected by union's certification application TATE ANDALE CANADA INC.; RE USWA.....(Mar.)	254
Discharge - Discharge for Union Activity - Interim Relief - Remedies - Unfair Labour Practice - Board directing employer to reinstate employees on interim basis pending disposition of unfair labour practice discharge complaint - Employer also directed to provide copy of Board notice to all employees affected by union's certification application CMP GROUP (1985) LTD.; RE LAUNDRY & LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847 ..... (Sept.)	824
Discharge - Discharge for Union Activity - Interim Relief - Remedies - Unfair Labour Practice - Board directing reinstatement of discharged employees on interim basis pending final disposition of unfair labour practice complaint - Employer also directed to post Board notice in prominent places in workplace EAST SIDE MARIO'S, 988421 ONTARIO INC. C.O.B. AS; RE UFCW, LOCAL 175/633.....(July)	587
Discharge - Discharge for Union Activity - Interim Relief - Remedies - Unfair Labour Practice - Board noting exceptionally broad language of section 92.1 of the <i>Act</i> , as well as its "facilitative" or "forensic" thrust - Board explaining advantages of timely intervention without finding fault - Board assessing potential harm in making or not making interim order from perspective of employer, union, aggrieved employees and other employees who may be affected by impugned conduct and directing interim reinstatement of discharged employees pending disposition of unfair labour practice complaint TATE ANDALE CANADA INC.; USWA..... (Oct.)	1019
Discharge - Discharge for Union Activity - Interim Relief - Remedies - Unfair Labour Practice - Union claiming that various lay-offs and changes in employee duties constituting unfair labour practices - Union seeking interim relief pending disposition of unfair labour practice complaint - Board satisfied that important labour relations interests, including preserving ability of employees to freely participate in union activities, outweighing temporary disruption of company's affairs caused by interim orders - Employer ordered to reinstate certain	

employees and to restore duties or hours to others on interim basis until unfair labour practice complaint determined

J.C.V.R. PACKAGING INC.; RE UNITED STEELWORKERS OF AMERICA..(Nov.) 1145

Discharge - Discharge for Union Activity - Interim Relief - Remedies - Unfair Labour Practice - Union filing complaint in respect of alleged unlawful discharge in August 1992 - Union applying for interim order reinstating discharged employee in February 1993 - In all the circumstances, including the elapsed time between the discharge and the coming into force of section 92.1 and including the applicant's one month delay in filing union's application, Board not satisfied that balance of harm favouring the applicant - Application dismissed

PRICE CLUB CANADA INC.; RE UFCW, LOCAL 175..... (July) 635

Discharge - Discharge for Union Activity - Interim Relief - Remedies - Unfair Labour Practice - Union making complaint in October 1992 alleging that employees unlawfully discharged for union activity - Hearing in discharge complaint commencing in December 1992 and continuing on dates in February, April and May 1993 - Union filing application in February 1993 seeking interim reinstatement of employees pending final determination of complaint - Assuming truth of allegations, complaint making out arguable case for remedies sought - Board weighing relative labour relations harm resulting from granting or not granting interim order sought and declining to order interim relief - Delay militating against granting interim relief - Board not persuaded that interim order power ought to be used to limit or avoid harm which is purely financial - Application dismissed

MORRISON MEAT PACKERS LTD.; RE U.A.W. .... (Apr.) 358

Discharge - Duty of Fair Representation - Evidence - Practice and Procedure - Unfair Labour Practice - Applicant alleging that union's failure to take his discharge grievance to arbitration violating the *Act* - At conclusion of applicant's case, Board entertaining union's motion for non-suit without requiring it to elect whether it wished to call evidence - Board satisfied that applicant had presented no basis, on his own evidence, upon which application could succeed - Application dismissed

KENNETH EDWARD HOMER; RE IBEW AND ITS LOCAL 636; RE ST. CATHARINES HYDRO-ELECTRIC COMMISSION ..... (May) 433

Discharge - Duty of Fair Representation - Remedies - Trade Union - Trade Union Status - Unfair Labour Practice - Applicant claiming that Association's failure to advance discharge grievance to arbitration violating the *Act* - Board rejecting assertion of Association and employer that Association not a trade union within the meaning of the *Act* - Board finding that Association violating its duty to applicant under section 69 of the *Act* by never turning its mind to merits of applicant's case - Association directed to consider merits of applicant's case, to conduct any investigation it feels appropriate, and to advise applicant within specified period of what it intends to do and the reasons for its decision

SUSAN FORBES; RE THE SIMCOE COUNTY ROMAN CATHOLIC SEPARATE SCHOOL CUSTODIANS; THE SIMCOE COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD..... (Dec.) 1283

Discharge - Evidence - Just Cause - Unfair Labour Practice - Employee alleging discharge without just cause contrary to section 81.2 of the *Act* - Employer alleging that discharge justified in view of culminating incident - Board permitting employer to rely on prior employment record where employer prepared to prove misconduct making up that record - Board finding discharge penalty just and reasonable in circumstances - Application dismissed

THE BRICK WAREHOUSE CORPORATION; RE WILLIAM HODGSKISS .....(Nov.) 1206

Discharge - Health and Safety - Employee alleging that he was discharged contrary to *Occupational Health and Safety Act* - Employer making preliminary motion that application

be dismissed because applicant elected to have discharge dealt with through arbitration under provisions of collective agreement - Employer's preliminary motion upheld - Application dismissed

GUELPH TRANSPORTATION COMMISSION; RE EDWARD MCGIMPSEY . (Sept.)

842

Discharge - Intimidation and Coercion - Judicial Review - Unfair Labour Practice - Board finding employer in violation of the *Act* in respect of severity of penalty imposed on one employee for releasing confidential information regarding employee names and telephone numbers, the exclusion of another employee from working in the office, and in respect of communications about unions in meetings with employees - Board dismissing complaint in relation to other discipline and hiring practices and meetings at two other employer locations - Employer's application for judicial review dismissed by Divisional Court

SOBEYS INC. RE; U.F.C.W., LOCAL 1000A..... (July)

715

Discharge - Intimidation and Coercion - Judicial Review - Unfair Labour Practice - Stay - Board finding employer in violation of the *Act* in respect of severity of penalty imposed on one employee for releasing confidential information regarding employee names and telephone numbers, the exclusion of another employee from working in the office, and in respect of communications about unions in meetings with employees - Board dismissing complaint in relation to other discipline and hiring practices and meetings at two other employer locations - Employer applying for judicial review of Board's decision and seeking interim relief - Motions judge staying Board's decision - Order of motions judge set aside by 3-judge panel of Divisional Court on basis that judge applied wrong test on a stay and on basis of certain factual errors in her decision - Divisional Court holding that strong *prima facie* case that decision patently unreasonable must be made out before a stay should be granted

SOBEYS INC. RE; U.F.C.W., LOCAL 1000A..... (Feb.)

155

Discharge for Union Activity - Certification - Certification Where Act Contravened - Discharge - Board finding that employer violated the *Act* by laying off two employees and by soliciting and obtaining signatures of employees on anti-union petition - Employer directed to reinstate and compensate employees, to allow union to meet with bargaining unit employees during normal working hours, and to post Board notice in workplace - Board also certifying union under section 9.2 of the *Act*

CMP GROUP (1985) LTD.; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847..... (Dec.)

1247

Discharge for Union Activity - Certification - Certification Where Act Contravened - Discharge - Intimidation and Coercion - Remedies - Unfair Labour Practice - Board finding that employer embarked on scheme of harassment and intimidation of union organizers and supporters and accepting that termination of certain employees motivated by involvement in union organizing campaign - Board satisfied that, as result of employer violations of the *Act*, true wishes of employees unlikely to be ascertained - Board regarding it as unnecessary to consider whether or not union having adequate membership support for collective bargaining, in view of clear direction to the Board in legislature's amendment of section 9.2 of the *Act* - Certificate issuing

CARLETON UNIVERSITY STUDENTS' ASSOCIATION INC.; RE CUPE ..... (Oct.)

938

Discharge for Union Activity - Certification - Certification Where Act Contravened - Discharge - Remedies - Unfair Labour Practice - Board finding that employer violated *Act* by discharging certain employees and by seeking return of materials provided to employees by the union - Board directing that employees be reinstated with compensation and certifying union under section 9.2 of the *Act* - Board directing that union be permitted to convene

meeting of employees on company premises during working hours and directing employer to provide union with list of employees' names, addresses and telephone numbers

ROYAL SHIRT COMPANY LIMITED; RE ACTWU .....(Nov.)

1177

Discharge for Union Activity - Discharge - Evidence - Interim Relief - Practice and Procedure - Remedies - Unfair Labour Practice - Board commenting on importance of filing accurate declarations confirmed by persons with first-hand knowledge - Board unwilling to rely on hearsay material - Union alleging that employee discharged for union activity and seeking interim reinstatement with compensation - Employer denying anti-union *animus* and claiming that discharge motivated by employee having lied to management about theft committed by another employee - Board rejecting argument that interim relief power should be used only in rare and exceptional circumstances - Board concluding that complaint and declarations reflecting arguable case on the merits - Board noting chilling effect of discharge on organizing campaign and that union organizing drive a relatively fragile enterprise in which momentum is often critical - Board recognizing potential harm to employer in temporary negative effect on managerial authority and on its policy regarding theft - On balance, harm from granting order held to be less than harm which might flow from not granting it - Board directing interim reinstatement, but declining to award interim compensation

LOEB HIGHLAND, 810048 ONTARIO LIMITED C.O.B. AS; RE UFCW, LOCAL 175/633 .....(Mar.)

197

Discharge for Union Activity - Discharge - Evidence - Interim Relief - Practice and Procedure - Remedies - Unfair Labour Practice - Board commenting on importance of filing accurate declarations confirmed by persons with first-hand knowledge - Board unwilling to rely on hearsay material - Union alleging that employee discharged for union activity and seeking interim reinstatement with compensation - Employer denying anti-union *animus* and claiming that discharge motivated by employee having lied to management about theft committed by another employee - Board rejecting argument that interim relief power should be used only in rare and exceptional circumstances - Board concluding that complaint and declarations reflecting arguable case on the merits - Board noting chilling effect of discharge on organizing campaign and that union organizing drive a relatively fragile enterprise in which momentum is often critical - Board recognizing potential harm to employer in temporary negative effect on managerial authority and on its policy regarding theft - On balance, harm from granting order held to be less than harm which might flow from not granting it - Board directing interim reinstatement, but declining to award interim compensation

LOEB HIGHLAND, 810048 ONTARIO LIMITED C.O.B. AS; RE UFCW, LOCAL 175/633 .....(Apr.)

354

Discharge for Union Activity - Discharge - Evidence - Practice and Procedure - Unfair Labour Practice - Employer claiming that employee discharged for having lied to management about theft committed by another employee - Union objecting to introduction of evidence about "similar incident" involving other employee on ground that it pertained to material fact which had not been set out in employer's response - Board relying on Rule 20 of Board's Rules of Procedure to uphold objection - Discharge tainted by anti-union *animus* - Board finding that employer violated the Act when it met with employee to discuss his organizing activities and when the employee was discharged - Reinstatement with compensation ordered

LOEB IGA HIGHLAND, 810048 ONTARIO LTD. C.O.B. AS; RE UFCW, LOCAL 175/633 .....(Mar.)

208

Discharge for Union Activity - Discharge - Interference in Trade Unions - Intimidation and Coercion - Unfair Labour Practice - Remedies - Board finding lay-offs partly or wholly motivated by anti-union sentiment and that Act violated when employer threatened to close

plant if union came in -Complaint allowed - Reinstatement with compensation ordered - Employer also directed to mail Board notices to bargaining unit members at their homes

BARTON FEEDERS INC.; RE U.F.C.W., LOCAL 633..... (Feb.) 89

Discharge for Union Activity - Discharge - Interim Relief - Practice and Procedure - Remedies - Unfair Labour Practice - Whether declarations filed by the parties deficient - Board noting that where the only support for a critical aspect of a party's case is a hearsay portion of a declaration, the Board may attach little or no weight to that portion of the declaration - Whether to reinstate union organizers accused by employer of theft pending final disposition of unfair labour practice complaint - Potential labour relations harm sought to be avoided by union significantly greater than potential harm to employer of temporary reinstatement - Interim reinstatement ordered

EAST SIDE MARIO'S, 988421 ONTARIO INC. C.O.B. AS; U.F.C.W., LOCAL 175/633.....(Aug.) 744

Discharge for Union Activity - Discharge - Interim Relief - Remedies - Unfair Labour Practice - Board directing employer to reinstate employees on an interim basis pending disposition of their unfair labour practice discharge complaint - Employer also directed to post Board notice in workplace and to provide copies of notice to employees affected by union's certification application

TATE ANDALE CANADA INC.; RE USWA.....(Mar.) 254

Discharge for Union Activity - Discharge - Interim Relief - Remedies - Unfair Labour Practice - Board directing employer to reinstate employees on interim basis pending disposition of unfair labour practice discharge complaint - Employer also directed to provide copy of Board notice to all employees affected by union's certification application

CMP GROUP (1985) LTD.; RE LAUNDRY & LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847 ..... (Sept.) 824

Discharge for Union Activity - Discharge - Interim Relief - Remedies - Unfair Labour Practice - Board directing reinstatement of discharged employees on interim basis pending final disposition of unfair labour practice complaint - Employer also directed to post Board notice in prominent places in workplace

EAST SIDE MARIO'S, 988421 ONTARIO INC. C.O.B. AS; RE UFCW, LOCAL 175/633..... (July) 587

Discharge for Union Activity - Discharge - Interim Relief - Remedies - Unfair Labour Practice - Board noting exceptionally broad language of section 92.1 of the *Act*, as well as its "facilitative" or "forensic" thrust - Board explaining advantages of timely intervention without finding fault - Board assessing potential harm in making or not making interim order from perspective of employer, union, aggrieved employees and other employees who may be affected by impugned conduct and directing interim reinstatement of discharged employees pending disposition of unfair labour practice complaint

TATE ANDALE CANADA INC.; USWA..... (Oct.) 1019

Discharge for Union Activity - Discharge - Interim Relief - Remedies - Unfair Labour Practice - Union claiming that various lay-offs and changes in employee duties constituting unfair labour practices - Union seeking interim relief pending disposition of unfair labour practice complaint - Board satisfied that important labour relations interests, including preserving ability of employees to freely participate in union activities, outweighing temporary disruption of company's affairs caused by interim orders - Employer ordered to reinstate certain employees and to restore duties or hours to others on interim basis until unfair labour practice complaint determined

J.C.V.R. PACKAGING INC.; RE UNITED STEELWORKERS OF AMERICA..(Nov.) 1145

Discharge for Union Activity - Discharge - Interim Relief - Remedies - Unfair Labour Practice - Union filing complaint in respect of alleged unlawful discharge in August 1992 - Union applying for interim order reinstating discharged employee in February 1993 - In all the circumstances, including the elapsed time between the discharge and the coming into force of section 92.1 and including the applicant's one month delay in filing union's application, Board not satisfied that balance of harm favouring the applicant - Application dismissed	
PRICE CLUB CANADA INC.; RE UFCW, LOCAL 175 .....	(July) 635
Discharge for Union Activity - Discharge - Interim Relief - Remedies - Unfair Labour Practice - Union making complaint in October 1992 alleging that employees unlawfully discharged for union activity - Hearing in discharge complaint commencing in December 1992 and continuing on dates in February, April and May 1993 - Union filing application in February 1993 seeking interim reinstatement of employees pending final determination of complaint - Assuming truth of allegations, complaint making out arguable case for remedies sought - Board weighing relative labour relations harm resulting from granting or not granting interim order sought and declining to order interim relief - Delay militating against granting interim relief - Board not persuaded that interim order power ought to be used to limit or avoid harm which is purely financial - Application dismissed	
MORRISON MEAT PACKERS LTD.; RE U.A.W. ....	(Apr.) 358
Duty of Fair Referral - Construction Industry - Parties - Practice and Procedure - Unfair Labour Practice - Business manager neither a necessary nor a proper party - Board granting respondent's motion to dismiss application as against union's business manager - Union's business representative and business manager referring out-of-work members on basis of their subjective and personal opinions of members' qualifications, abilities and interests - Union found to have contravened its own hiring hall working rules and section 70 of the <i>Act</i> - Complaint allowed and compensation ordered	
STEVEN SHEPPARD; RE BRIAN CHRISTIE, UA, LOCAL 463 .....	(June) 555
Duty of Fair Referral - Construction Industry - Remedies - Unfair Labour Practice - Board previously upholding complaint and reconvening on issue of damages - Board concluding that duty of fair referral complainant owing duty to union to mitigate losses, but not obliged to accept referrals as apprentice to fulfill duty - Board also deciding that damages should be reduced because of complainant's unreasonable delay in filing complaint	
JAMES N. KRALL; RE C.J.A., LOCAL 785 .....	(Jan.) 39
Duty of Fair Referral - Construction Industry - Unfair Labour Practice - Union imposing fine on complainant following trial and conviction - Union refusing to issue referral slip to complainant in response to requested name hire - Union's conduct in a number of respects found to be arbitrary, discriminatory and in bad faith - Board directing that complainant be compensated for losses flowing from violation of the <i>Act</i> and remaining seized	
MICHAEL A. RANKIN; RE LOCAL 721 OF THE BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS OF AMERICA .....	(July) 644
Duty of Fair Referral - Duty of Fair Representation - Interim Relief - Remedies - Unfair Labour Practice - Applicant working as lighting technician in film and television production - Applicant alleging that his union violating <i>Act</i> in various ways in denying him work opportunities and requesting interim order directing union to issue permits on request of employers authorizing applicant's hiring pending disposition of unfair labour practice complaint - Board finding that potential harm to applicant of not granting order primarily financial and that balance of harm weighing in favour of union - Application dismissed	
BRYAN FORDE; RE NABET, LOCAL 700 .....	(Dec.) 1296
Duty of Fair Representation - Damages - Discharge - Remedies - Unfair Labour Practice - Board	

earlier finding union in violation of duty of fair representation, but parties failing to agree on appropriate remedy - Reinstatement with compensation for nine months lost wages ordered - In assessing damages, Board not taking into account two-month delay in complaining to Board, but making deduction for failure to adequately mitigate and for complainant's admitted misconduct prior to discharge

TIM TURNER; RE THE RETAIL, WHOLESALE BAKERY AND CONFECTION-  
ERY WORKERS UNION, LOCAL 461 OF THE R.W.D.S.U. AFL:CIO:CLC AND  
RICK KENT, ALF DAVIS, GARY SAGE, AB PLAYER; RE WESTON  
BAKERIES .....(Aug.) 811

Duty of Fair Representation - Discharge - Evidence - Practice and Procedure - Unfair Labour Practice - Applicant alleging that union's failure to take his discharge grievance to arbitration violating the *Act* - At conclusion of applicant's case, Board entertaining union's motion for non-suit without requiring it to elect whether it wished to call evidence - Board satisfied that applicant had presented no basis, on his own evidence, upon which application could succeed - Application dismissed

KENNETH EDWARD HOMER; RE IBEW AND ITS LOCAL 636; RE ST. CATHA-  
RINES HYDRO-ELECTRIC COMMISSION ..... (May) 433

Duty of Fair Representation - Discharge - Remedies - Trade Union - Trade Union Status - Unfair Labour Practice - Applicant claiming that Association's failure to advance discharge grievance to arbitration violating the *Act* - Board rejecting assertion of Association and employer that Association not a trade union within the meaning of the *Act* - Board finding that Association violating its duty to applicant under section 69 of the *Act* by never turning its mind to merits of applicant's case - Association directed to consider merits of applicant's case, to conduct any investigation it feels appropriate, and to advise applicant within specified period of what it intends to do and the reasons for its decision

SUSAN FORBES; RE THE SIMCOE COUNTY ROMAN CATHOLIC SEPARATE  
SCHOOL CUSTODIANS; THE SIMCOE COUNTY ROMAN CATHOLIC SEPA-  
RATE SCHOOL BOARD ..... (Dec.) 1283

Duty of Fair Representation - Duty of Fair Referral - Interim Relief - Remedies - Unfair Labour Practice - Applicant working as lighting technician in film and television production - Applicant alleging that his union violating *Act* in various ways in denying him work opportunities and requesting interim order directing union to issue permits on request of employers authorizing applicant's hiring pending disposition of unfair labour practice complaint - Board finding that potential harm to applicant of not granting order primarily financial and that balance of harm weighing in favour of union - Application dismissed

BRYAN FORDE; RE NABET, LOCAL 700 ..... (Dec.) 1296

Duty of Fair Representation - Interim Relief - Remedies - Unfair Labour Practice - Applicant taxi drivers requesting order from Board preventing union from selling three taxi stand spots until complaint alleging breach of union's duty of fair representation decided - Applicants alleging potential harm to third parties if interim order not made - Board noting that harm to third parties would not in itself generally be sufficient to warrant granting interim order - Application dismissed

SHARIAR NAMVAR AND MALIK AWADA; RE RWDSU, AFL:CIO:CLC AND  
BLUE LINE TAXI COMPANY LTD. ....(Aug.) 793

Duty of Fair Representation - Practice and Procedure - Unfair Labour Practice - Board exercising its discretion against inquiring into complaint for various reasons, including its finding that

inquiry would be an expensive and largely academic exercise serving no tangible policy or labour relations interest - Application dismissed

WILLIAM A. CURTIS; RE THE COMMUNICATIONS, ENERGY & PAPERWORKERS UNION OF CANADA, THE CANADIAN PAPERWORKERS UNION.....(Dec.)

1260

Duty of Fair Representation - Practice and Procedure - Unfair Labour Practice - Complainant alleging that union's failure to arbitrate her grievance violating duty of fair representation - Board sketching out general framework within which complainant's rights must be determined - Board finding that union acted in good faith and that there was nothing arbitrary or discriminatory in the way union represented complainant - Complaint dismissed

LEILA YATEMAN; RE CUPE, LOCAL 1974 ('THE UNION'); RE KINGSTON GENERAL HOSPITAL ('THE HOSPITAL') .....(Aug.)

777

Duty to Bargain in Good Faith - Collective agreement - Interference with Trade Unions - Final Offer Vote - Unfair Labour Practice - Employer final offer containing duration clause of June 30, 1993 to July 1, 1993 - Final offer vote under section 40 the *Act* taking place in December 1992 resulting in acceptance by employees - Union refusing to execute offer - Union asking Board to direct extension of duration clause contained in final offer to one year from date of final offer vote and to require execution of collective agreement bearing that term - Union's application dismissed

PEACOCK LUMBER LTD.; RE RWDSU, AFL-CIO-CLC .....(July)

633

Duty to Bargain in Good Faith - Construction Industry - Change in Working Conditions - Remedies - Unfair Labour Practice - Employer violating "statutory freeze" in failing to contact union office when it needed new employees and in failing to pay wages and benefits required by collective agreement - Employer directed to compensate union on behalf of its members - Employer operating entirely outside terms of agreement during period of bargaining - Employer failing to make every reasonable effort to make a collective agreement - In circumstances of this case, however, Board preferring to allow bargaining process to continue rather than to impose settlement on the parties under section 91(4)(d) of the *Act* - Parties directed to meet and bargain in good faith

GENERAL WOOD PRODUCTS; RE CJA, LOCAL 1072 .....(July)

597

Duty to Bargain in Good Faith - Damages - Final Offer Vote - Interference in Trade Unions - Judicial Review - Lockout - Natural Justice - Remedies - Unfair Labour Practice - Employer engaging in illegal lockout by transferring bargaining unit work to another company immediately before strike/lockout deadline - Work transfer motivated at least in part by desire to avoid union - Employer breaching duty to bargain in good faith by sending uninformed representatives to bargaining table, by failing to disclose contemplated transfer of work, and by bargaining directly with employees hired to work at other company - Direct bargaining constituting interference in trade union - Employer demand for employee consent to release of addresses for final offer vote constituting interference in trade union - Board ordering employer to cease and desist from violations of *Act* - Board ordering resumption of bargaining meetings - Board ordering employer to compensate all bargaining unit employees for monetary losses arising out of breaches - Board ordering employer to pay union's negotiating costs - Board ordering employer to return work to original company and make no further movement without disclosure to union - Board ordering employer to provide union with names and addresses of bargaining unit employees as of lockout date and to advise of additions or changes - Board ordering workplace Notice of Posting signed personally by employer - Board ordering copy of decision to be mailed to all bargaining unit employees - Employer applying for judicial review and submitting that Board exceeded its

jurisdiction and breached rules of natural justice - Judicial review application dismissed by Divisional Court

PLAZA FIBREGLAS MANUFACTURING LIMITED, PLAZA ELECTRO-PLATING LTD., CITCOR MANUFACTURING LTD. AND SABINA CITRON; RE: ONTARIO LABOUR RELATIONS BOARD AND UNITED STEELWORKERS OF AMERICA.....(Jan.) 83

Duty to Bargain in Good Faith - Unfair Labour Practice - Employer alleging that union proposal regarding desk top publishing comprising bargaining unit scope provision and that union's intention to take issue to impasse violating duty to bargain - Employer also alleging that modified proposal made after employer's complaint to the Board amounting to penalty which union sought to impose on employer for filing bad faith bargaining complaint - Complaints dismissed

COMMERCIAL GRAPHICS LIMITED; RE GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, LOCAL 500M..... (June) 483

Duty to Bargain in Good Faith - Unfair Labour Practice - Union alleging that Board of Education breached duty to bargain when its elected trustees failed to approve proposed settlement put before them by their negotiators with recommendation for ratification - Board concluding that circumstances faced by Board of Education when asked to ratify had shifted sufficiently and generated sufficient economic uncertainty to warrant reconsideration of Board of Education's earlier collective bargaining stance - Change in circumstances following tentative settlement found to be real and compelling - Board of Education's decision not pretence or subterfuge - Complaint dismissed

BOARD OF EDUCATION FOR THE CITY OF HAMILTON, THE; RE LOCAL 527, O.P.E.I.U. .... (Apr.) 308

Employee - Bargaining Unit - Employee Reference - Practice and Procedure - Employer objecting to application under section 108(2) of the *Act* on ground that application relates to persons in positions specifically excluded from bargaining unit - Where Board is satisfied that application under section 108(2) raises real "employee" issue, Board will proceed with it, even where "real" issue is whether that person is in the unless there is a cogent reason not to - Board doubting whether section 108(2) giving Board discretion to refuse to entertain application on basis that "real" issue is something else - Board disagreeing with decisions seeming to suggest that Board determination that person not "employee" not necessarily meaning that that person not in the bargaining unit

LONDON FREE PRESS PRINTING COMPANY LIMITED; RE SOUTHERN ONTARIO NEWSPAPER GUILD LOCAL 87, THE NEWSPAPER GUILD (CLC, AFL-CIO) ..... (Oct.) 977

Employee - Certification - Dependent Contractor - Whether certain drivers engaged by respondent newspapers dependent contractors or independent contractors - Board noting various features distinguishing drivers from other employees of the respondent newspapers - Drivers held to be independent contractors - Certification applications dismissed

AJAX/PICKERING NEWS ADVERTISER, METROLAND PRINTING, PUBLISHING AND DISTRIBUTING LIMITED C.O.B. AS; RE RWDSU, AFL:CIO:CLC. (June) 473

Employee - Certification - Employee Reference - Township's "Road Superintendent" not exercising managerial functions within meaning of section 1(3) of the *Act* - Certificate issuing

THE CORPORATION OF THE TOWNSHIP OF LIMERICK; RE IUOE, LOCAL 793 ..... (July) 683

Employee - Certification - Union seeking to represent bargaining unit of salaried "supervisors" - Whether exercising "managerial functions" within the meaning of s.1(3) of the *Act* - Board

weighing various factors, including the number of supervisors in relation to subordinates, the exclusivity of the supervisory function, and the variety of circumstances placing supervisors' duties and obligations at odds with employees they supervise - Board concluding that supervisors not "employees" within meaning of the *Act* - Application dismissed

FORD MOTOR COMPANY OF CANADA LIMITED; RE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 880; RE GROUP OF EMPLOYEES .....(Jan.)

1

Employee Reference - Adjournment - Practice and Procedure - Board cancelling oral hearing scheduled to receive representations with respect to Officer's Report - Parties directed to make written representations - Board to make appropriate determinations on basis of evidence recorded in Officer's Report and parties' representations

MARC MECHANICAL LIMITED; RE LOCAL 47 SMW..... (May)

441

Employee Reference - Bargaining Unit - Employee - Practice and Procedure - Employer objecting to application under section 108(2) of the *Act* on ground that application relates to persons in positions specifically excluded from bargaining unit - Where Board is satisfied that application under section 108(2) raises real "employee" issue, Board will proceed with it, even where "real" issue is whether that person is in the unless there is a cogent reason not to - Board doubting whether section 108(2) giving Board discretion to refuse to entertain application on basis that "real" issue is something else - Board disagreeing with decisions seeming to suggest that Board determination that person not "employee" not necessarily meaning that that person not in the bargaining unit

LONDON FREE PRESS PRINTING COMPANY LIMITED; RE SOUTHERN ONTARIO NEWSPAPER GUILD LOCAL 87, THE NEWSPAPER GUILD (CLC, AFL-CIO) ..... (Oct.)

977

Employee Reference - Certification - Employee - Township's "Road Superintendent" not exercising managerial functions within meaning of section 1(3) of the *Act* - Certificate issuing

THE CORPORATION OF THE TOWNSHIP OF LIMERICK; RE IUOE, LOCAL 793 ..... (July)

683

Employer - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Interference in Trade Unions - Intimidation and Coercion - Union alleging that when employer learned of certification application, it eliminated all employees known or believed to be union supporters - Parties disputing whether construction company or Indian Band the "employer" - Board finding construction company to be the "employer" and that termination of aggrieved employees tainted by anti-union animus - Union entitled to certification on the basis of membership support in excess of 55 percent and under section 8 of the *Act* - Certificate issuing

GRANT DEVELOPMENT CORPORATION AND/OR THE OJIBWAYS OF PIC RIVER, FIRST NATION (THE PIC 50 - HERON BAY INDIAN BAND); RE L.I.U.N.A., LOCAL 607.....(Jan.)

21

Employer Support - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground

that full Board meeting violated rules of natural justice and seeking interim relief - Single judge of Divisional Court granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Court dismissing motion to produce various reports and documents - Board bringing motion before panel of Divisional Court to set aside order of single judge - At opening of hearing, respondent moving to have member of the panel disqualified on basis of "apprehended bias" - Respondent's motion dismissed

ELLIS-DON LIMITED; RE OLRB AND I.B.E.W., LOCAL 894 ..... (Jan.) 80

Environmental Protection Act - Adjournment - Discharge - Evidence - Health and Safety - Practice and Procedure - Settlement - Employer seeking adjournment pending disposition of application in Ontario Court (General Division) for declaration that enforceable settlement entered into by the parties - Adjournment request denied - Board dismissing objection to anticipated evidence of complainant's former counsel - Evidence of communications between solicitors in furtherance of settlement not privileged where existence of agreement constituting issue in dispute - Board finding complaint settled in absence of signed documents confirming settlement and declining to inquire further into complaint

FUJI HUNT PHOTOGRAPHIC CHEMICALS LTD., FUJI PHOTO FILM CANADA INC. AND FUJI PHOTO FILM CO. LTD.; RE FRED NICHOLAS ..... (June) 494

Evidence - Abandonment - Bargaining Rights - Conciliation - Construction Industry - Judicial Review - Strike - Employer asserting that threatened strike unlawful on ground that union had previously abandoned bargaining rights - Threatened strike following timely "notice to bargain", appointment of conciliation officer and issuance of "no board" report - Board declining to inquire into continued existence of bargaining rights in circumstances of this case - Board also not accepting employer's assertion that threatened picketing by union improperly motivated and, therefore, unlawful - Application dismissed - Employer applying for judicial review and seeking to have matter heard before single judge on grounds of urgency - Court not satisfied that matter "urgent" and transferring application to Divisional Court

ASSOCIATED CONTRACTING INC.; RE THE QUEEN IN RIGHT OF ONTARIO (MINISTER OF LABOUR), THE OLRB AND IUOE, LOCAL 793 ..... (Oct.) 1071

Evidence - Abandonment - Bargaining Rights - Conciliation - Construction Industry - Picketing - Strike - Employer asserting that threatened strike unlawful on ground that union had previously abandoned bargaining rights - Threatened strike following timely "notice to bargain", appointment of conciliation officer and issuance of "no board" report - Board declining to inquire into continued existence of bargaining rights in circumstances of this case - Board also not accepting employer's assertion that threatened picketing by union improperly motivated and, therefore, unlawful - Application dismissed

ASSOCIATED CONTRACTING INC.; RE MICHAEL GALLAGHER AND IUOE, LOCAL 793 ..... (Nov.) 1117

Evidence - Adjournment - Certification - Charter of Rights and Freedoms - Constitutional Law - Natural Justice - Practice and Procedure - Representation Vote - Board declining to hear objecting employees' Charter argument where notice not given to Attorney-General - Board declining to adjourn hearing so that notice to Attorney-General could be given - Board applying *Hemlo Gold Mines* case and affirming that "application date" in section 8(4) of the Act means date on which application is filed and holding that this interpretation involves no denial of natural justice - Board declining to hear employees' *viva voce* evidence in connection with discretion to order representation vote - Board's discretion under section 8(3) of the Act should be exercised in way that recognizes that statutory scheme based pri-

marily on documentary evidence of membership - Proffered evidence would not affect Board's of discretion in circumstances of this case

SHAW INDUSTRIES LTD. C.O.B. AS CANUSA (A DIVISION OF SHAW INDUSTRIES LTD.); RE IWA - CANADA; RE GROUP OF EMPLOYEES.....(Aug.)

798

Evidence - Adjournment - Discharge - Environmental Protection Act - Health and Safety - Practice and Procedure - Settlement - Employer seeking adjournment pending disposition of application in Ontario Court (General Division) for declaration that enforceable settlement entered into by the parties - Adjournment request denied - Board dismissing objection to anticipated evidence of complainant's former counsel - Evidence of communications between solicitors in furtherance of settlement not privileged where existence of agreement constituting issue in dispute - Board finding complaint settled in absence of signed documents confirming settlement and declining to inquire further into complaint

FUJI HUNT PHOTOGRAPHIC CHEMICALS LTD., FUJI PHOTO FILM CANADA INC. AND FUJI PHOTO FILM CO. LTD.; RE FRED NICHOLAS ..... (June)

494

Evidence - Adjournment - Jurisdictional Dispute - Practice and Procedure - Witness - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to members of Sheet Metal Workers union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists

VIC WEST STEEL, CJA, LOCAL 1256; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE AND SMW, LOCAL 539; RE ONTARIO SHEET METAL AND AIR HANDLING GROUP ..... (Mar.)

256

Evidence - Adjournment - Practice and Procedure - Unfair Labour Practice - Board declining to adjourn unfair labour practice complaint pending resolution of employment status issue - Board declining to dismiss application for want of particulars - Board declining to dismiss application for failure to raise *prima facie* case - Board directing responding party to proceed first with its evidence

THE ESSEX COUNTY BOARD OF EDUCATION; RE OSSTF ..... (July)

687

Evidence - Bargaining Unit - Certification - Charges - Intimidation and Coercion - Membership Evidence - Petition - Board relying on section 8(4) of the Act and Rule 47 of the Rules of Procedure in declining to receive untimely employee evidence of objection - Employer and objecting employees raising allegations with respect to method of collection of memberships by union - Board declining to inquire into certain matters not sufficiently particularized and determining that other allegations not causing Board to doubt reliability of membership evidence - Board applying *Hospital for Sick Children* test and determining that employees of separate division or department properly falling within applied for bargaining unit - Interim certificate issuing

SHRADER CANADA LIMITED; RE UNITED STEELWORKERS OF AMERICA; RE GROUP OF EMPLOYEES ..... (Mar.)

246

Evidence - Certification - Charges - Intimidation and Coercion - Petition - Practice and Procedure

- Witness - Board reviewing principles governing restricted scope of reply evidence and declining to permit employer to split its case by calling one witness to events in dispute during its case in chief, and the other witness during reply - Board concluding that timely petition not a voluntary expression of employee wishes - Board finding no intimidation or other improper conduct by union casting doubt on union's membership evidence - Certificate issuing

TATE ANDALE CANADA INC.; RE UNITED STEELWORKERS OF AMERICA.....(Apr.)

383

Evidence - Certification - Fraud - Membership Evidence - Union withdrawing earlier certification application after discovering that membership cards submitted to Board had been "pre-witnessed" by in-plant collector - Employer submitting that subsequent certification application "tainted" by continued participation of collector in organizing campaign - Irregularity in collection of membership evidence in first application not constituting "fraud" on the Board - Board finding no reason to doubt reliability of membership evidence filed in subsequent application

TRANSCOR INC.; RE SEU, LOCAL 183.....(Nov.)

1233

Evidence - Construction Industry - Adjournment - Judicial Review - Jurisdictional Dispute - Natural Justice - Practice and Procedure - Witness - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to members of Sheet Metal Workers' union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters' union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers' union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists - Carpenters' union applying for judicial review on grounds of alleged denial of natural justice - Sheet Metal Workers' union moving to strike affidavit filed by Carpenters' union in judicial review application - Divisional Court dismissing motion to strike affidavit

VIC WEST STEEL, CJA, LOCAL 1256; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE AND SMW, LOCAL 539; RE ONTARIO SHEET METAL AND AIR HANDLING GROUP .....(Nov.)

1243

Evidence - Construction Industry - Jurisdictional Dispute - Practice and Procedure - Labourers' union and Carpenters' union disputing assignment of certain work in context of demolition project - Work in dispute involving erection of wooden hoarding with canopy around site of building to be demolished, with hoarding to remain throughout construction of new building on same site - Board considering how 1986 Labourers' designation to represent "construction labourers" engaged in demolition in ICI sector impacting on work assignment disputes - Board determining that it ought to look initially to demolition project evidence (as opposed to evidence of all types of ICI work) within Board Area in question - Only where this practice evidence is insufficient to enable Board to dispose of matter will Board look to other ICI practice with the Board Area - Board directing that disputed work be assigned to Carpenters' union

DELSAN DEMOLITION LIMITED, CJA, LOCAL 494 AND; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL AND THE LIUNA, LOCAL 625..... (Oct.)

963

Evidence - Construction Industry - Jurisdictional Dispute - Practice and Procedure - Reconsidera-

tion - Timeliness - Board making final order in jurisdictional dispute complaint following consultation with parties - Labourer's union requesting reconsideration and arguing that Board improperly refused to hear certain evidence, that there was no evidence to support certain findings, and that Board misinterpreted material before it - Board explaining its approach to requests for reconsideration given need for finality in its adjudication - Board also explaining new "consultation" procedure for resolving jurisdictional dispute complaints - Board finding no reason to reconsider its disposition of the complaint - EPSCA's separate reconsideration request dismissed as untimely under Rule 85 and on its merits

ONTARIO HYDRO, EPSCA, LIUNA, LOCAL 1059; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE, SMW, LOCAL 473 ..... (May)

442

Evidence - Discharge - Discharge for Union Activity - Interim Relief - Practice and Procedure - Remedies - Unfair Labour Practice - Board commenting on importance of filing accurate declarations confirmed by persons with first-hand knowledge - Board unwilling to rely on hearsay material - Union alleging that employee discharged for union activity and seeking interim reinstatement with compensation - Employer denying anti-union *animus* and claiming that discharge motivated by employee having lied to management about theft committed by another employee - Board rejecting argument that interim relief power should be used only in rare and exceptional circumstances - Board concluding that complaint and declarations reflecting arguable case on the merits - Board noting chilling effect of discharge on organizing campaign and that union organizing drive a relatively fragile enterprise in which momentum is often critical - Board recognizing potential harm to employer in temporary negative effect on managerial authority and on its policy regarding theft - On balance, harm from granting order held to be less than harm which might flow from not granting it - Board directing interim reinstatement, but declining to award interim compensation

LOEB HIGHLAND, 810048 ONTARIO LIMITED C.O.B. AS; RE UFCW, LOCAL 175/633..... (Mar.)

197

Evidence - Discharge - Discharge for Union Activity - Interim Relief - Practice and Procedure - Remedies - Unfair Labour Practice - Board commenting on importance of filing accurate declarations confirmed by persons with first-hand knowledge - Board unwilling to rely on hearsay material - Union alleging that employee discharged for union activity and seeking interim reinstatement with compensation - Employer denying anti-union *animus* and claiming that discharge motivated by employee having lied to management about theft committed by another employee - Board rejecting argument that interim relief power should be used only in rare and exceptional circumstances - Board concluding that complaint and declarations reflecting arguable case on the merits - Board noting chilling effect of discharge on organizing campaign and that union organizing drive a relatively fragile enterprise in which momentum is often critical - Board recognizing potential harm to employer in temporary negative effect on managerial authority and on its policy regarding theft - On balance, harm from granting order held to be less than harm which might flow from not granting it - Board directing interim reinstatement, but declining to award interim compensation

LOEB HIGHLAND, 810048 ONTARIO LIMITED C.O.B. AS; RE UFCW, LOCAL 175/633..... (Apr.)

354

Evidence - Discharge - Discharge for Union Activity - Practice and Procedure - Unfair Labour Practice - Employer claiming that employee discharged for having lied to management about theft committed by another employee - Union objecting to introduction of evidence about "similar incident" involving other employee on ground that it pertained to material fact which had not been set out in employer's response - Board relying on Rule 20 of Board's Rules of Procedure to uphold objection - Discharge tainted by anti-union *animus* - Board finding that employer violated the Act when it met with employee to discuss his

organizing activities and when the employee was discharged - Reinstatement with compensation ordered

LOEB IGA HIGHLAND, 810048 ONTARIO LTD. C.O.B. AS; RE UFCW, LOCAL 175/633.....(Mar.) 208

Evidence - Discharge - Duty of Fair Representation - Practice and Procedure - Unfair Labour Practice - Applicant alleging that union's failure to take his discharge grievance to arbitration violating the *Act* - At conclusion of applicant's case, Board entertaining union's motion for non-suit without requiring it to elect whether it wished to call evidence - Board satisfied that applicant had presented no basis, on his own evidence, upon which application could succeed - Application dismissed

KENNETH EDWARD HOMER; RE IBEW AND ITS LOCAL 636; RE ST. CATHARINES HYDRO-ELECTRIC COMMISSION ..... (May) 433

Evidence - Discharge - Just Cause - Unfair Labour Practice - Employee alleging discharge without just cause contrary to section 81.2 of the *Act* - Employer alleging that discharge justified in view of culminating incident - Board permitting employer to rely on prior employment record where employer prepared to prove misconduct making up that record - Board finding discharge penalty just and reasonable in circumstances - Application dismissed

THE BRICK WAREHOSUE CORPORATION; RE WILLIAM HODGSKISS.....(Nov.) 1206

Evidence - Practice and Procedure - Unfair Labour Practice - Board not permitting counsel to pursue line of questioning where application did not particularize any of the facts on which the union was seeking to cross-examine

MORRISON'S MEAT PACKERS LTD.; RE UAW .....(Mar.) 226

Final Offer Vote - Collective agreement - Duty to Bargain in Good Faith - Interference with Trade Unions - Unfair Labour Practice - Employer final offer containing duration clause of June 30, 1993 to July 1, 1993 - Final offer vote under section 40 the *Act* taking place in December 1992 resulting in acceptance by employees - Union refusing to execute offer - Union asking Board to direct extension of duration clause contained in final offer to one year from date of final offer vote and to require execution of collective agreement bearing that term - Union's application dismissed

PEACOCK LUMBER LTD.; RE RWDSU, AFL-CIO-CLC ..... (July) 633

Final Offer Vote - Damages - Duty to Bargain in Good Faith - Interference in Trade Unions - Judicial Review - Lockout - Natural Justice - Remedies - Unfair Labour Practice - Employer engaging in illegal lockout by transferring bargaining unit work to another company immediately before strike/lockout deadline - Work transfer motivated at least in part by desire to avoid union - Employer breaching duty to bargain in good faith by sending uninformed representatives to bargaining table, by failing to disclose contemplated transfer of work, and by bargaining directly with employees hired to work at other company - Direct bargaining constituting interference in trade union - Employer demand for employee consent to release of addresses for final offer vote constituting interference in trade union - Board ordering employer to cease and desist from violations of *Act* - Board ordering resumption of bargaining meetings - Board ordering employer to compensate all bargaining unit employees for monetary losses arising out of breaches - Board ordering employer to pay union's negotiating costs - Board ordering employer to return work to original company and make no further movement without disclosure to union - Board ordering employer to provide union with names and addresses of bargaining unit employees as of lockout date and to advise of additions or changes - Board ordering workplace Notice of Posting signed personally by employer - Board ordering copy of decision to be mailed to all bargaining unit employees - Employer applying for judicial review and submitting that Board exceeded its

jurisdiction and breached rules of natural justice - Judicial review application dismissed by Divisional Court

PLAZA FIBREGLAS MANUFACTURING LIMITED, PLAZA ELECTRO-PLATING LTD., CITCOR MANUFACTURING LTD. AND SABINA CITRON; RE: ONTARIO LABOUR RELATIONS BOARD AND UNITED STEELWORKERS OF AMERICA.....(Jan.)

83

First Contract Arbitration - Judicial Review - Termination - Employer initially refusing to meet to bargain, subsequently attempting to delay commencement of bargaining and refusing to provide union with accurate collective bargaining information to which it was entitled - Employer engaging in surface bargaining - Employer positions with respect to management rights, wages, benefits and classifications uncompromising and without reasonable justification - First contract arbitration directed - Board dismissing termination application pursuant to subsection 40a(22) of the *Act* - Employer applying for judicial review on ground that the union had ceased to exist and, therefore, lacked the legal status to request conciliation (which was a statutory pre-condition for the Board's decision) - Employer also submitting that that Board committed jurisdictional error in its interpretation of s.40a(22) of the *Act* - Judicial Review application dismissed by Divisional Court - Application for leave to appeal dismissed by Court of Appeal

KNOB HILL FARMS LIMITED; RE U.F.C.W., LOCAL 206, THE CROWN IN RIGHT OF ONTARIO (MINISTER OF LABOUR), THE OLRB AND SUSAN CATERINA .....(Jan.)

83

Fraud - Certification - Evidence - Membership Evidence - Union withdrawing earlier certification application after discovering that membership cards submitted to Board had been "pre-witnessed" by in-plant collector - Employer submitting that subsequent certification application "tainted" by continued participation of collector in organizing campaign - Irregularity in collection of membership evidence in first application not constituting "fraud" on the Board - Board finding no reason to doubt reliability of membership evidence filed in subsequent application

TRANSCOR INC.; RE SEU, LOCAL 183.....(Nov.)

1233

Health and Safety - Adjournment - Discharge - Environmental Protection Act - Evidence - Practice and Procedure - Settlement - Employer seeking adjournment pending disposition of application in Ontario Court (General Division) for declaration that enforceable settlement entered into by the parties - Adjournment request denied - Board dismissing objection to anticipated evidence of complainant's former counsel - Evidence of communications between solicitors in furtherance of settlement not privileged where existence of agreement constituting issue in dispute - Board finding complaint settled in absence of signed documents confirming settlement and declining to inquire further into complaint

FUJI HUNT PHOTOGRAPHIC CHEMICALS LTD., FUJI PHOTO FILM CANADA INC. AND FUJI PHOTO FILM CO. LTD.; RE FRED NICHOLAS ..... (June)

494

Health and Safety - Discharge - Employee alleging that he was discharged contrary to *Occupational Health and Safety Act* - Employer making preliminary motion that application be dismissed because applicant elected to have discharge dealt with through arbitration under provisions of collective agreement - Employer's preliminary motion upheld - Application dismissed

GUELPH TRANSPORTATION COMMISSION; RE EDWARD MCGIMPSEY . (Sept.)

842

Health and Safety - Judicial Review - Employee citing second-hand tobacco smoke in work refusal - Board finding health and safety not real reason for refusal and that employer discipline not unlawful in circumstances - Complaint dismissed - Employee seeking judicial review on ground that members' conduct give rise to reasonable apprehension of bias -

Employee issuing summons to witness to Board member to secure evidence for use in judicial review application - Motions court judge concluding that summons an abuse of process and quashing it - Three-judge panel of Divisional Court upholding decision of motions judge and dismissing motion to set decision aside

BOEING CANADA/DE HAVILLAND DIVISION AND SUSAN A. TACON, JOHN A. RONSON AND DAVID A. PATTERSON AND OLRB; RE JILL BETTES ....(Mar.) 275

Health and Safety - Practice and Procedure - Settlement - Employer asking Board not to inquire into complaint on the basis that the matter had been settled - Board finding no good reason to permit the applicant to resile from his agreement and some good reasons not to permit him to do so - Board not inquiring further into complaint

STEEP ROCK RESOURCES INC.; RE CHRIS WALKER; RE TEAMSTERS LOCAL UNION 91 ..... (July) 680

*Hospital Labour Disputes Arbitration Act* - Change in Working Conditions - Damages - Remedies - Unfair Labour Practice - Board determining and declaring that certain scheduling changes affecting job sharing arrangements violating statutory "freeze" - Board declining to direct employer to restore previous work schedules in view of collective agreement made by parties subsequent to filing complaint, but directing that affected employees be compensated according to formula set out in decision

OAKVILLE LIFECARE CENTRE; RE ONA ..... (Oct.) 980

*Hospital Labour Disputes Arbitration Act* - Change in Working Conditions - Unfair Labour Practice - Union alleging that employer breaching statutory "freeze" by altering hours of work of employees without its consent - Board satisfied that nothing in collective agreement or long-standing scheduling practice precluding the scheduling changes complained of - Applications dismissed

MOHAWK HOSPITAL SERVICES INC.; RE CUPE, LOCAL 1605..... (Sept.) 873

*Hospital Labour Disputes Arbitration Act* - Termination - Employer seeking to terminate union's bargaining rights for failure to commence bargaining within 60 days of giving notice to bargain - Union not pursuing collective bargaining in a timely manner without reasonable explanation, but continuing to have contact with and pursue grievances on behalf of bargaining unit employees - Board directing representation vote

RIVERVIEW MANOR NURSING HOME; RE O.N.A. ....(Jan.) 54

Interference in Trade Unions - Adjustment Plan - Discharge - Interim Relief - Remedies - Unfair Labour Practice - Bargaining unit chairperson discharged some months before scheduled closure of part of employer's plant - Chairperson's discharge grievance being arbitrated, but arbitration proceeding likely to continue beyond closure date - Employer refusing to discuss adjustment plan with union so long as chairperson included on union's bargaining committee - Union seeking order preventing employer from refusing to allow chairperson to participate as member of union committee negotiating adjustment plan - Employer identifying no significant harm resulting from granting order sought - Board directing employer to cease and desist from refusing to recognize and deal with chairperson as member of union committee, and also to meet with union committee in order that parties may bargain in good faith to make adjustment plan

CROWN FAB DIVISION, THE ALLEN GROUP CANADA, LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 1256 ... (Oct.) 960

Interference in Trade Unions - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Employer - Intimidation and Coercion - Union alleging that when employer learned of certification application, it eliminated all employees known or

believed to be union supporters - Parties disputing whether construction company or Indian Band the "employer" - Board finding construction company to be the "employer" and that termination of aggrieved employees tainted by anti-union animus - Union entitled to certification on the basis of membership support in excess of 55 percent and under section 8 of the *Act* - Certificate issuing

GRANT DEVELOPMENT CORPORATION AND/OR THE OJIBWAYS OF PIC RIVER, FIRST NATION (THE PIC 50 - HERON BAY INDIAN BAND); RE L.I.U.N.A., LOCAL 607 ..... (Jan.)

21

Interference in Trade Unions - Damages - Duty to Bargain in Good Faith - Final Offer Vote - Judicial Review - Lockout - Natural Justice - Remedies - Unfair Labour Practice - Employer engaging in illegal lockout by transferring bargaining unit work to another company immediately before strike/lockout deadline - Work transfer motivated at least in part by desire to avoid union - Employer breaching duty to bargain in good faith by sending uninformed representatives to bargaining table, by failing to disclose contemplated transfer of work, and by bargaining directly with employees hired to work at other company - Direct bargaining constituting interference in trade union - Employer demand for employee consent to release of addresses for final offer vote constituting interference in trade union - Board ordering employer to cease and desist from violations of *Act* - Board ordering resumption of bargaining meetings - Board ordering employer to compensate all bargaining unit employees for monetary losses arising out of breaches - Board ordering employer to pay union's negotiating costs - Board ordering employer to return work to original company and make no further movement without disclosure to union - Board ordering employer to provide union with names and addresses of bargaining unit employees as of lockout date and to advise of additions or changes - Board ordering workplace Notice of Posting signed personally by employer - Board ordering copy of decision to be mailed to all bargaining unit employees - Employer applying for judicial review and submitting that Board exceeded its jurisdiction and breached rules of natural justice - Judicial review application dismissed by Divisional Court

PLAZA FIBREGLAS MANUFACTURING LIMITED, PLAZA ELECTRO-PLATING LTD., CITCOR MANUFACTURING LTD. AND SABINA CITRON; RE: ONTARIO LABOUR RELATIONS BOARD AND UNITED STEELWORKERS OF AMERICA ..... (Jan.)

83

Interference in Trade Unions - Discharge - Discharge for Union Activity - Intimidation and Coercion - Unfair Labour Practice - Remedies - Board finding lay-offs partly or wholly motivated by anti-union sentiment and that *Act* violated when employer threatened to close plant if union came in - Complaint allowed - Reinstatement with compensation ordered - Employer also directed to mail Board notices to bargaining unit members at their homes

BARTON FEEDERS INC.; RE U.F.C.W., LOCAL 633 ..... (Feb.)

89

Interference in Trade Unions - Interim Relief - Practice and Procedure - Remedies - Unfair Labour Practice - Union alleging that employer interfering with organizing drive by posting and distributing certain letter to employees - Board considering whether complaint making out arguable case and also assessing relative harm of granting or withholding relief - Board aiming to preserve union's right to meaningful remedy, should complaint be upheld, while intruding as little as possible on employer's interests - Employer directed to remove letter from any area in which it was posted and to refrain from communication with employees involving counselling workers to resign union membership - Board's order effective until disposition or settlement of complaint

REYNOLDS-LEMMERZ INDUSTRIES; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) ..... (Mar.)

242

- Interference in Trade Unions - Interim Relief - Remedies - Unfair Labour Practice - Union Successor Status - USWA filing complaint alleging employer interference in union activity and making request for interim relief - Application for interim relief made in context of continuing dispute between USWA and RWDSU over who represents employees of employer, and in context of earlier interim Board order directing that employees to continue to be represented in dealings with employer by individual union representatives who had customarily dealt with employment problems prior to July 1993 - Board granting further interim orders in connection with leaves of absence for union business and other matters in order to ensure that employer does not actively support either union at expense of the other, pending Board's decision in USWA's successor rights application
- NEW DOMINION STORES, A DIVISION OF THE GREAT ATLANTIC AND PACIFIC COMPANY OF CANADA, LIMITED AND RWDSU, AFL-CIO-CLC; RE RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCAL 414 ..... (Sept.) 880
- Interference in Trade Unions - Natural Justice - Practice and Procedure - Unfair Labour Practice - Board dismissing motion alleging that manner in which hearing conducted by panel denying natural justice - Board finding that discipline by employer of union executive member for engaging in legitimate and protected union activity violating the *Act* - Employer directed to rescind discipline
- THE CORPORATION OF THE CITY OF HAMILTON; CUPE, LOCAL 5.....(Nov.) 1214
- Interference in Trade Unions - Right of Access - Unfair Labour Practice - Employer directing employees not to engage in union activity or discussion of union related issues on company premises - Board rejecting employer's argument that section 11.1 of the *Act* altered the law regarding the right of employees to engage in union activity in the workplace - Prohibition of union activity and discussion of union related issues violating section 65 and 67 and declared to be of no effect
- SOBEYS INC.; RE UFCW, LOCAL 1000A.....(July) 675
- Interference with Trade Unions - Collective agreement - Duty to Bargain in Good Faith - Final Offer Vote - Unfair Labour Practice - Employer final offer containing duration clause of June 30, 1993 to July 1, 1993 - Final offer vote under section 40 the *Act* taking place in December 1992 resulting in acceptance by employees - Union refusing to execute offer - Union asking Board to direct extension of duration clause contained in final offer to one year from date of final offer vote and to require execution of collective agreement bearing that term - Union's application dismissed
- PEACOCK LUMBER LTD.; RE RWDSU, AFL-CIO-CLC .....(July) 633
- Interim Relief - Adjournment - Construction Industry - Construction Industry Grievance - Practice and Procedure - Board noting that real dispute concerning geographic jurisdiction and concomitant right to work under applicable ICI provincial agreement of Labourers' union locals 247 and 527 - Board adjourning proceeding and directing filing of detailed pleadings, including complete representations in support of the respective positions - Board issuing interim order under section 45(8) of the *Act* regarding right of certain contractors to assign work to members of locals 247 and 527 pending Board's final determination of grievance
- BELLAI BROTHERS LTD.; RE L.I.U.N.A., LOCAL 247; RE L.I.U.N.A., LOCAL 527 .....(Aug.) 717
- Interim Relief - Adjustment Plan - Discharge - Interference in Trade Unions - Remedies - Unfair Labour Practice - Bargaining unit chairperson discharged some months before scheduled closure of part of employer's plant - Chairperson's discharge grievance being arbitrated, but arbitration proceeding likely to continue beyond closure date - Employer refusing to discuss adjustment plan with union so long as chairperson included on union's bargaining commit-

tee - Union seeking order preventing employer from refusing to allow chairperson to participate as member of union committee negotiating adjustment plan - Employer identifying no significant harm resulting from granting order sought - Board directing employer to cease and desist from refusing to recognize and deal with chairperson as member of union committee, and also to meet with union committee in order that parties may bargain in good faith to make adjustment plan

CROWN FAB DIVISION, THE ALLEN GROUP CANADA, LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 1256 ... (Oct.)

960

Interim Relief - Bargaining Rights - Conciliation - Reference - Remedies - Union Successor Status - Various locals of RWDSU rejecting proposed merger with UFCW, disaffiliating from RWDSU, amalgamating with each other to form RWDSU/Canada, and merging with with USWA to form Canadian Service Sector Division of USWA - Board in *A & P* case declaring USWA to have acquired rights, privileges and duties of its predecessors - USWA seeking interim order in connection with further 200 pending union successor rights applications - Board declaring USWA to be interim exclusive bargaining agent for employees in bargaining units affected by pending successor rights applications - Board advising Minister of Labour that he may treat USWA as exclusive bargaining agent in respect of affected bargaining units, and may appoint arbitrators and conciliation officers as requested by USWA notwithstanding assertions made by any other trade union - Board dismissing cross-application for interim relief made by UFCW

THE BAY - KINGSTON, ET AL; RE RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCALS 414, 422, 440, 448, 461, 483, 488, 1000 AND 1688.....(Dec.)

1350

Interim Relief - Bargaining Rights - Construction Industry - Practice and Procedure - Remedies - Unfair Labour Practice - Bricklayers' union Local 2 alleging that Builders Association, Labourers' union and others committing unfair labour practice by, *inter alia*, agreeing to sub-contracting clause in collective agreement between them requiring bricklaying work to be performed by companies bound to agreement with Labourers' union or Bricklayers' union Local 1 - Local 2 requesting that operation of sub-contacting clause be stayed pending resolution of unfair labour practice complaint - Board commenting on lack of particularity and absence of supporting facts establishing first-hand knowledge in declaration filed by Local 2 - Board also noting that interim relief applications may be decided without oral hearings and that parties who fail to provide complete written representations, as required by Rule 86, do so at their peril - Only very discrete core of Local 2's complaint supporting arguable case - Board considering delay in starting proceedings - No obvious reason why harm to Local 2 of denying application outweighing harm to responding parties of staying sub-contracting provision - Application for interim order dismissed

METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION AND LIUNA, LOCAL 183; RE BAC, LOCAL 2; RE METROPOLITAN INDUSTRIAL & COMMERCIAL MASONRY CONTRACTORS INC.; RE MASONRY CONTRACTORS ASSOCIATION OF TORONTO INC.....(Mar.)

219

Interim Relief - Bargaining Rights - Remedies - Union Successor Status - Alleged predecessor union resisting alleged successor union's application under section 63 of the *Act* claiming that it has bargaining rights for several thousand employees of grocery chain - Board directing that employees at each store to continue to be represented in their dealings with their employer by the individual union representatives who customarily dealt with employment problems prior to July 1993, pending the Board's determination concerning which union

has bargaining rights- Board directing that copies of its decision be provided to all store managers and that copies be posted in each store

NEW DOMINION STORES, A DIVISION OF THE GREAT ATLANTIC AND PACIFIC COMPANY OF CANADA, LIMITED; RE RWDSU, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCAL 414, 422, 440, 461, 1000 AND THE RWDSU, CANADIAN SERVICE SECTOR DIVISION OF THE USWA; RE RWDSU, AFL-CIO-CLC AND ITS LOCAL AFFILIATE RWDSU, AFL-CIO-CLC, LOCAL 414, 429, 545, 579, 582 AND 915.....(Aug.)

783

Interim Relief - Change in Working Conditions - Remedies - Unfair Labour Practice - Union alleging that school board employers' planned measures regarding taking of vacations breaching statutory freeze - Unions asking Board to make interim order directing employers to permit employees to choose when they will take vacation during July and August - Union not relying on any potential harm beyond difficulty in remedy to individual employees - Union not asserting any effect on wider labour relations context between parties - In absence of broader labour relations considerations, balance of harm not weighing in favour of making interim order - Applications dismissed

LA SECTION CATHOLIQUE DU CONSEIL SCOLAIRE DE LANGUE FRANÇAISE D'OTTAWA-CARLETON; RE ASSOCIATION DES EMPLOYÉS D'OTTAWA-CARLETON (EMPLOYÉS DE BUREAU, DE SECRÉTARIAT ET EMPLOYÉS TECHNIQUES) ..... (Sept.)

844

Interim Relief - Combination of Bargaining Units - Remedies - Union seeking interim order prohibiting otherwise lawful strikes or lock-outs pending disposition of application to combine bargaining units - Board not finding reasons advanced for order sought sufficient to justify its imposition

THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF OTTAWA; RE IBEW, LOCAL 636 .....(Nov.)

1231

Interim Relief - Construction Industry - Practice and Procedure - Related Employer - Remedies - Sale of a Business - Union applying for interim orders directing pre-hearing production of relevant lists and documents - Orders issuing but Board noting that production orders may be made on written and properly particularized requests, including representations, without recourse to section 92.1 of the Act

HIGHLAND YORK FLOORING COMPANY LIMITED AND HIGHLAND YORK INTERIORS INC.; RE CARPENTERS AND ALLIED WORKERS, LOCAL 27, CJA.....(July)

607

Interim Relief - Discharge - Discharge for Union Activity - Evidence - Practice and Procedure - Remedies - Unfair Labour Practice - Board commenting on importance of filing accurate declarations confirmed by persons with first-hand knowledge - Board unwilling to rely on hearsay material - Union alleging that employee discharged for union activity and seeking interim reinstatement with compensation - Employer denying anti-union *animus* and claiming that discharge motivated by employee having lied to management about theft committed by another employee - Board rejecting argument that interim relief power should be used only in rare and exceptional circumstances - Board concluding that complaint and declarations reflecting arguable case on the merits - Board noting chilling effect of discharge on organizing campaign and that union organizing drive a relatively fragile enterprise in which momentum is often critical - Board recognizing potential harm to employer in temporary negative effect on managerial authority and on its policy regarding theft - On balance, harm from granting order held to be less than harm which might flow from not granting it - Board directing interim reinstatement, but declining to award interim compensation

LOEB HIGHLAND, 810048 ONTARIO LIMITED C.O.B. AS; RE UFCW, LOCAL 175/633.....(Mar.)

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- Interim Relief - Discharge - Discharge for Union Activity - Evidence - Practice and Procedure - Remedies - Unfair Labour Practice - Board commenting on importance of filing accurate declarations confirmed by persons with first-hand knowledge - Board unwilling to rely on hearsay material - Union alleging that employee discharged for union activity and seeking interim reinstatement with compensation - Employer denying anti-union *animus* and claiming that discharge motivated by employee having lied to management about theft committed by another employee - Board rejecting argument that interim relief power should be used only in rare and exceptional circumstances - Board concluding that complaint and declarations reflecting arguable case on the merits - Board noting chilling effect of discharge on organizing campaign and that union organizing drive a relatively fragile enterprise in which momentum is often critical - Board recognizing potential harm to employer in temporary negative effect on managerial authority and on its policy regarding theft - On balance, harm from granting order held to be less than harm which might flow from not granting it - Board directing interim reinstatement, but declining to award interim compensation
- LOEB HIGHLAND, 810048 ONTARIO LIMITED C.O.B. AS; RE UFCW, LOCAL 175/633.....(Apr.) 354
- Interim Relief - Discharge - Discharge for Union Activity - Practice and Procedure - Remedies - Unfair Labour Practice - Whether declarations filed by the parties deficient - Board noting that where the only support for a critical aspect of a party's case is a hearsay portion of a declaration, the Board may attach little or no weight to that portion of the declaration - Whether to reinstate union organizers accused by employer of theft pending final disposition of unfair labour practice complaint - Potential labour relations harm sought to be avoided by union significantly greater than potential harm to employer of temporary reinstatement - Interim reinstatement ordered
- EAST SIDE MARIO'S, 988421 ONTARIO INC. C.O.B. AS; U.F.C.W., LOCAL 175/633.....(Aug.) 744
- Interim Relief - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board directing employer to reinstate employees on an interim basis pending disposition of their unfair labour practice discharge complaint - Employer also directed to post Board notice in workplace and to provide copies of notice to employees affected by union's certification application
- TATE ANDALE CANADA INC.; RE USWA.....(Mar.) 254
- Interim Relief - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board directing employer to reinstate employees on interim basis pending disposition of unfair labour practice discharge complaint - Employer also directed to provide copy of Board notice to all employees affected by union's certification application
- CMP GROUP (1985) LTD.; RE LAUNDRY & LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847 ..... (Sept.) 824
- Interim Relief - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board directing reinstatement of discharged employees on interim basis pending final disposition of unfair labour practice complaint - Employer also directed to post Board notice in prominent places in workplace
- EAST SIDE MARIO'S, 988421 ONTARIO INC. C.O.B. AS; RE UFCW, LOCAL 175/633..... (July) 587
- Interim Relief - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board noting exceptionally broad language of section 92.1 of the *Act*, as well as its "facilitative" or "forensic" thrust - Board explaining advantages of timely intervention without finding fault - Board assessing potential harm in making or not making interim order from perspective of employer, union, aggrieved employees and other employees who may be

affected by impugned conduct and directing interim reinstatement of discharged employees pending disposition of unfair labour practice complaint

TATE ANDALE CANADA INC.; USWA ..... (Oct.) 1019

Interim Relief - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Union claiming that various lay-offs and changes in employee duties constituting unfair labour practices - Union seeking interim relief pending disposition of unfair labour practice complaint - Board satisfied that important labour relations interests, including preserving ability of employees to freely participate in union activities, outweighing temporary disruption of company's affairs caused by interim orders - Employer ordered to reinstate certain employees and to restore duties or hours to others on interim basis until unfair labour practice complaint determined

J.C.V.R. PACKAGING INC.; RE UNITED STEELWORKERS OF AMERICA ..(Nov.) 1145

Interim Relief - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Union filing complaint in respect of alleged unlawful discharge in August 1992 - Union applying for interim order reinstating discharged employee in February 1993 - In all the circumstances, including the elapsed time between the discharge and the coming into force of section 92.1 and including the applicant's one month delay in filing union's application, Board not satisfied that balance of harm favouring the applicant - Application dismissed

PRICE CLUB CANADA INC.; RE UFCW, LOCAL 175 ..... (July) 635

Interim Relief - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Union making complaint in October 1992 alleging that employees unlawfully discharged for union activity - Hearing in discharge complaint commencing in December 1992 and continuing on dates in February, April and May 1993 - Union filing application in February 1993 seeking interim reinstatement of employees pending final determination of complaint - Assuming truth of allegations, complaint making out arguable case for remedies sought - Board weighing relative labour relations harm resulting from granting or not granting interim order sought and declining to order interim relief - Delay militating against granting interim relief - Board not persuaded that interim order power ought to be used to limit or avoid harm which is purely financial - Application dismissed

MORRISON MEAT PACKERS LTD.; RE U.A.W. .... (Apr.) 358

Interim Relief - Duty of Fair Referral - Duty of Fair Representation - Remedies - Unfair Labour Practice - Applicant working as lighting technician in film and television production - Applicant alleging that his union violating *Act* in various ways in denying him work opportunities and requesting interim order directing union to issue permits on request of employers authorizing applicant's hiring pending disposition of unfair labour practice complaint - Board finding that potential harm to applicant of not granting order primarily financial and that balance of harm weighing in favour of union - Application dismissed

BRYAN FORDE; RE NABET, LOCAL 700 ..... (Dec.) 1296

Interim Relief - Duty of Fair Representation - Remedies - Unfair Labour Practice - Applicant taxi drivers requesting order from Board preventing union from selling three taxi stand spots until complaint alleging breach of union's duty of fair representation decided - Applicants alleging potential harm to third parties if interim order not made - Board noting that harm to third parties would not in itself generally be sufficient to warrant granting interim order - Application dismissed

SHARIAR NAMVAR AND MALIK AWADA; RE RWDSU, AFL:CIO:CLC AND BLUE LINE TAXI COMPANY LTD. .... (Aug.) 793

Interim Relief - Interference in Trade Unions - Practice and Procedure - Remedies - Unfair Labour Practice - Union alleging that employer interfering with organizing drive by posting

and distributing certain letter to employees - Board considering whether complaint making out arguable case and also assessing relative harm of granting or withholding relief - Board aiming to preserve union's right to meaningful remedy, should complaint be upheld, while intruding as little as possible on employer's interests - Employer directed to remove letter from any area in which it was posted and to refrain from communication with employees involving counselling workers to resign union membership - Board's order effective until disposition or settlement of complaint

REYNOLDS-LEMMERZ INDUSTRIES; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) .....(Mar.)

242

Interim Relief - Interference in Trade Unions - Remedies - Unfair Labour Practice - Union Successor Status - USWA filing complaint alleging employer interference in union activity and making request for interim relief - Application for interim relief made in context of continuing dispute between USWA and RWDSU over who represents employees of employer, and in context of earlier interim Board order directing that employees to continue to be represented in dealings with employer by individual union representatives who had customarily dealt with employment problems prior to July 1993 - Board granting further interim orders in connection with leaves of absence for union business and other matters in order to ensure that employer does not actively support either union at expense of the other, pending Board's decision in USWA's successor rights application

NEW DOMINION STORES, A DIVISION OF THE GREAT ATLANTIC AND PACIFIC COMPANY OF CANADA, LIMITED AND RWDSU, AFL-CIO-CLC; RE RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCAL 414 ..... (Sept.)

880

Interim Relief - Remedies - Unfair Labour Practice - Union alleging that, as result of participation by employees in arbitration proceeding, employer altering employees' hours of work in violation of the *Act* - Union seeking order restoring employees' hours of work pending resolution of unfair labour practice complaint - Union and employer having collective bargaining relationship since 1988 and Board identifying no significant labour relations harm to affected employees or union if order not made - Board refusing to order employer to restore employees' hours of work, but directing it to notify employees of their rights under the *Act* through distribution of Board notice

FORT ERIE DUTY FREE SHOPPE INC.; RE ONTARIO LIQUOR BOARDS EMPLOYEES' UNION .....(Dec.)

1307

Intimidation and Coercion - Adjournment - Arbitration - Practice and Procedure - Unfair Labour Practice - Board adjourning applicant's unfair labour practice complaint *sine die* pending completion of arbitration process - Board to deal with case after arbitrator's decision if necessary to do so - Board directing that copies of its decision be posted in workplace

FORTINOS SUPERMARKET LIMITED; RE ERROL MCKENZIE KETTEL; RE UFCW, LOCALS 175/633 ..... (Oct.)

974

Intimidation and Coercion - Bargaining Unit - Certification - Charges - Evidence - Membership Evidence - Petition - Board relying on section 8(4) of the *Act* and Rule 47 of the Rules of Procedure in declining to receive untimely employee evidence of objection - Employer and objecting employees raising allegations with respect to method of collection of memberships by union - Board declining to inquire into certain matters not sufficiently particularized and determining that other allegations not causing Board to doubt reliability of membership evidence - Board applying *Hospital for Sick Children* test and determining that

employees of separate division or department properly falling within applied for bargaining unit - Interim certificate issuing

SHRADER CANADA LIMITED; RE UNITED STEELWORKERS OF AMERICA;  
RE GROUP OF EMPLOYEES ..... (Mar.) 246

Intimidation and Coercion - Certification - Charges - Membership Evidence - Practice and Procedure - Following making of union's certification application, employee alleging forgery on one of cards submitted with application - Union investigating and seeking to withdraw application - Union making subsequent certification application and requesting that Board transfer some of membership evidence filed in first application to subsequent application - Employer wishing membership evidence collected in first application to be declared of no value and seeking to have its allegations of intimidation heard - Employer also seeking bar on future certification applications - Board permitting first application to be withdrawn without imposing bar - Employer free to pursue allegations of intimidation in subsequent certification application

CIRCLET FOOD INC.; RE USWA ..... (May) 406

Intimidation and Coercion - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Employer - Interference in Trade Unions - Union alleging that when employer learned of certification application, it eliminated all employees known or believed to be union supporters - Parties disputing whether construction company or Indian Band the "employer" - Board finding construction company to be the "employer" and that termination of aggrieved employees tainted by anti-union animus - Union entitled to certification on the basis of membership support in excess of 55 percent and under section 8 of the *Act* - Certificate issuing

GRANT DEVELOPMENT CORPORATION AND/OR THE OJIBWAYS OF PIC RIVER, FIRST NATION (THE PIC 50 - HERON BAY INDIAN BAND); RE L.I.U.N.A., LOCAL 607 ..... (Jan.) 21

Intimidation and Coercion - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board finding that employer embarked on scheme of harassment and intimidation of union organizers and supporters and accepting that termination of certain employees motivated by involvement in union organizing campaign - Board satisfied that, as result of employer violations of the *Act*, true wishes of employees unlikely to be ascertained - Board regarding it as unnecessary to consider whether or not union having adequate membership support for collective bargaining, in view of clear direction to the Board in legislature's amendment of section 9.2 of the *Act* - Certificate issuing

CARLETON UNIVERSITY STUDENTS' ASSOCIATION INC.; RE CUPE ..... (Oct.) 938

Intimidation and Coercion - Certification - Charges - Evidence - Petition - Practice and Procedure - Witness - Board reviewing principles governing restricted scope of reply evidence and declining to permit employer to split its case by calling one witness to events in dispute during its case in chief, and the other witness during reply - Board concluding that timely petition not a voluntary expression of employee wishes - Board finding no intimidation or other improper conduct by union casting doubt on union's membership evidence - Certificate issuing

TATE ANDALE CANADA INC.; RE UNITED STEELWORKERS OF AMERICA ..... (Apr.) 383

Intimidation and Coercion - Discharge - Discharge for Union Activity - Interference in Trade Unions - Unfair Labour Practice - Remedies - Board finding lay-offs partly or wholly motivated by anti-union sentiment and that *Act* violated when employer threatened to close

plant if union came in - Complaint allowed - Reinstatement with compensation ordered - Employer also directed to mail Board notices to bargaining unit members at their homes

BARTON FEEDERS INC.; RE U.F.C.W., LOCAL 633..... (Feb.)

89

Intimidation and Coercion - Discharge - Judicial Review - Unfair Labour Practice - Board finding employer in violation of the *Act* in respect of severity of penalty imposed on one employee for releasing confidential information regarding employee names and telephone numbers, the exclusion of another employee from working in the office, and in respect of communications about unions in meetings with employees - Board dismissing complaint in relation to other discipline and hiring practices and meetings at two other employer locations - Employer's application for judicial review dismissed by Divisional Court

SOBEYS INC. RE; U.F.C.W., LOCAL 1000A..... (July)

715

Intimidation and Coercion - Judicial Review - Discharge - Unfair Labour Practice - Stay - Board finding employer in violation of the *Act* in respect of severity of penalty imposed on one employee for releasing confidential information regarding employee names and telephone numbers, the exclusion of another employee from working in the office, and in respect of communications about unions in meetings with employees - Board dismissing complaint in relation to other discipline and hiring practices and meetings at two other employer locations - Employer applying for judicial review of Board's decision and seeking interim relief - Motions judge staying Board's decision - Order of motions judge set aside by 3-judge panel of Divisional Court on basis that judge applied wrong test on a stay and on basis of certain factual errors in her decision - Divisional Court holding that strong *prima facie* case that decision patently unreasonable must be made out before a stay should be granted

SOBEYS INC. RE; U.F.C.W., LOCAL 1000A..... (Feb.)

155

Judicial Review - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Single judge of Divisional Court granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Court dismissing motion to produce various reports and documents - Board bringing motion before panel of Divisional Court to set aside order of single judge - At opening of hearing, respondent moving to have member of the panel disqualified on basis of "apprehended bias" - Respondent's motion dismissed

ELLIS-DON LIMITED; RE OLRB AND I.B.E.W., LOCAL 894..... (Jan.)

80

Judicial Review - Abandonment - Bargaining Rights - Conciliation - Construction Industry - Evidence - Strike - Employer asserting that threatened strike unlawful on ground that union had previously abandoned bargaining rights - Threatened strike following timely "notice to bargain", appointment of conciliation officer and issuance of "no board" report - Board declining to inquire into continued existence of bargaining rights in circumstances of this case - Board also not accepting employer's assertion that threatened picketing by union improperly motivated and, therefore, unlawful - Application dismissed - Employer applying for judicial review and seeking to have matter heard before single judge on grounds of

urgency - Court not satisfied that matter “urgent” and transferring application to Divisional Court

ASSOCIATED CONTRACTING INC.; RE THE QUEEN IN RIGHT OF ONTARIO  
(MINISTER OF LABOUR), THE OLRB AND IUOE, LOCAL 793 ..... (Oct.)

1071

Judicial Review - Adjournment - Construction Industry -Evidence - Jurisdictional Dispute - Natural Justice - Practice and Procedure - Witness - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to members of Sheet Metal Workers' union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters' union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers' union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists - Carpenters' union applying for judicial review on grounds of alleged denial of natural justice - Sheet Metal Workers' union moving to strike affidavit filed by Carpenters' union in judicial review application - Divisional Court dismissing motion to strike affidavit

VIC WEST STEEL, CJA, LOCAL 1256; RE ONTARIO SHEET METAL WORKERS'  
AND ROOFERS' CONFERENCE AND SMW, LOCAL 539; RE ONTARIO SHEET  
METAL AND AIR HANDLING GROUP .....(Nov.)

1243

Judicial Review - Certification - Charter of Rights and Freedoms - Constitutional Law - Natural Justice - Petition - Representation Vote - Group of objecting employees filing “petition” in opposition to union after certification application filing date - Objecting employees asking Board to extend application filing date to allow timely filing of petition, and to conduct certification hearing in Thunder Bay - Objecting employees also challenging constitutional validity of section 8(4) of the *Act* and Rule 47 of the Board's Rules of Procedure, and asserting violation of rules of natural justice - Board dismissing various objecting employees' objections in oral ruling - Objecting employees then seeking to have application dismissed on grounds of reasonable apprehension of bias - Board finding no reasonable apprehension of bias and dismissing motion - Company's request that Board exercise its discretion under section 8(3) of the *Act* to direct representation vote denied - Union enjoying support in excess of 55% in appropriate bargaining unit - Certificate issuing - Divisional Court dismissing objecting employees' judicial review application

HEMLO GOLD MINES INC., USWA AND; RE LAROY MACKENZIE AND  
WAYNE MACKENZIE ET AL. ALSO KNOWN AS EMPLOYEES OF HEMLO  
GOLD MINES INC. FOR A DEMOCRATIC CHOICE ..... (May)

471

Judicial Review - Certification - Constitutional Law - Board determining that it had no jurisdiction over employees working at nuclear generating stations which were federal undertakings pursuant to the *Constitution Act* and s. 18 of the *Atomic Energy Control Act* - Divisional Court quashing Board decision - Court of Appeal reinstating Board decision and declaring that *Canada Labour Code* applies to Hydro employees employed at nuclear facilities coming under s.18 of the *Atomic Energy Control Act* - Supreme Court of Canada dis-

missing appeal and confirming order of Court of Appeal reinstating decision of Ontario Labour Relations Board

ONTARIO HYDRO; OLRB, THE SOCIETY OF ONTARIO HYDRO, PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES, CUPE - CLC ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000, THE COALITION TO STOP THE CERTIFICATION OF THE SOCIETY ON BEHALF OF CERTAIN EMPLOYEES, TOMS STEVENS, C.S. STEVENSON, MICHELLE MORRISEY-O'RYAN AND GEORGE ORR; THE ATTORNEY GENERAL OF CANADA; RE THE ATTORNEY GENERAL FOR ONTARIO, THE ATTORNEY GENERAL OF QUEBEC AND THE ATTORNEY GENERAL FOR NEW BRUNSWICK ..... (Oct.)

1072

Judicial Review - Certification - Dependent Contractor - Construction Industry - Whether certain individuals or entities properly characterized as "employees" or "dependent contractors", or as "independent contractors" - Board finding certain entities not dependent on respondent employer and therefore "independent contractors" - Carpentry business run by 2 partners and employing one helper - Whether, by using helper, partners of carpentry business engaging in entrepreneurial activity, such that they are independent contractors - Board finding partners and employee of carpentry business sufficiently dependent on respondent employer as to make it their employer the purposes of the *Act* - Certificates issuing - Divisional Court dismissing employer's application for judicial review

ALPA WOOD MOULDINGS COMPANY, A DIVISION OF ALPA LUMBER INC.; RE OLRB AND CARPENTERS ALLIED WORKERS, LOCAL 27, C.J.A. .... (Feb.)

154

Judicial Review - Constitutional Law - Construction Industry - Construction Industry Grievance - Board dismissing employer's submission that construction of banks within sphere of federal labour relations - Board assuming jurisdiction to deal with grievance - Bank seeking judicial review - Divisional Court finding construction of new bank building to be ordinary construction activity and within provincial jurisdiction - Judicial Review application dismissed - motion for leave to appeal dismissed by Court of Appeal

TORONTO-DOMINION BANK; RE CJA LOCAL 785, OLRB, ATTORNEY GENERAL OF CANADA AND ATTORNEY GENERAL OF ONTARIO ..... (June)

578

Judicial Review - Construction Industry - Construction Industry Grievance - Damages - Remedies - Employer grieving against union and employee alleging improper claim and receipt of room and board allowance by employee - Employer claiming damages - Nothing in collective agreement giving Board the power to award damages against employee - Board dismissing employer's request for damages, but holding that declaratory relief available - Declaration issuing - Employer seeking judicial review - Divisional Court ruling that Board declined its jurisdiction to consider award of damages against the employee and remitting matter to the Board for its determination

ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION, THE; RE ONTARIO ALLIED CONSTRUCTION TRADES COUNCIL, HFIA, LOCAL 95, JAMES CORD, AND THE OLRB ..... (Mar.)

276

Judicial Review - Damages - Duty to Bargain in Good Faith - Final Offer Vote - Interference in Trade Unions - Lockout - Natural Justice - Remedies - Unfair Labour Practice - Employer engaging in illegal lockout by transferring bargaining unit work to another company immediately before strike/lockout deadline - Work transfer motivated at least in part by desire to avoid union - Employer breaching duty to bargain in good faith by sending uninformed representatives to bargaining table, by failing to disclose contemplated transfer of work, and by bargaining directly with employees hired to work at other company - Direct bargaining constituting interference in trade union - Employer demand for employee consent to release of addresses for final offer vote constituting interference in trade union - Board ordering employer to cease and desist from violations of *Act* - Board ordering resumption

of bargaining meetings - Board ordering employer to compensate all bargaining unit employees for monetary losses arising out of breaches - Board ordering employer to pay union's negotiating costs - Board ordering employer to return work to original company and make no further movement without disclosure to union - Board ordering employer to provide union with names and addresses of bargaining unit employees as of lockout date and to advise of additions or changes - Board ordering workplace Notice of Posting signed personally by employer - Board ordering copy of decision to be mailed to all bargaining unit employees - Employer applying for judicial review and submitting that Board exceeded its jurisdiction and breached rules of natural justice - Judicial review application dismissed by Divisional Court

PLAZA FIBREGLAS MANUFACTURING LIMITED, PLAZA ELECTRO-PLATING LTD., CITCOR MANUFACTURING LTD. AND SABINA CITRON; RE: ONTARIO LABOUR RELATIONS BOARD AND UNITED STEELWORKERS OF AMERICA.....(Jan.)

83

Judicial Review - Discharge - Intimidation and Coercion - Unfair Labour Practice - Board finding employer in violation of the *Act* in respect of severity of penalty imposed on one employee for releasing confidential information regarding employee names and telephone numbers, the exclusion of another employee from working in the office, and in respect of communications about unions in meetings with employees - Board dismissing complaint in relation to other discipline and hiring practices and meetings at two other employer locations - Employer's application for judicial review dismissed by Divisional Court

SOBEYS INC. RE; U.F.C.W., LOCAL 1000A.....(July)

715

Judicial Review - Discharge - Intimidation and Coercion - Unfair Labour Practice - Stay - Board finding employer in violation of the *Act* in respect of severity of penalty imposed on one employee for releasing confidential information regarding employee names and telephone numbers, the exclusion of another employee from working in the office, and in respect of communications about unions in meetings with employees - Board dismissing complaint in relation to other discipline and hiring practices and meetings at two other employer locations - Employer applying for judicial review of Board's decision and seeking interim relief - Motions judge staying Board's decision - Order of motions judge set aside by 3-judge panel of Divisional Court on basis that judge applied wrong test on a stay and on basis of certain factual errors in her decision - Divisional Court holding that strong *prima facie* case that decision patently unreasonable must be made out before a stay should be granted

SOBEYS INC. RE; U.F.C.W., LOCAL 1000A.....(Feb.)

155

Judicial Review - First Contract Arbitration - Termination - Employer initially refusing to meet to bargain, subsequently attempting to delay commencement of bargaining and refusing to provide union with accurate collective bargaining information to which it was entitled - Employer engaging in surface bargaining - Employer positions with respect to management rights, wages, benefits and classifications uncompromising and without reasonable justification - First contract arbitration directed - Board dismissing termination application pursuant to subsection 40a(22) of the *Act* - Employer applying for judicial review on ground that the union had ceased to exist and, therefore, lacked the legal status to request conciliation (which was a statutory pre-condition for the Board's decision) - Employer also submitting that that Board committed jurisdictional error in its interpretation of s.40a(22) of the *Act* - Judicial Review application dismissed by Divisional Court - Application for leave to appeal dismissed by Court of Appeal

KNOB HILL FARMS LIMITED; RE U.F.C.W., LOCAL 206, THE CROWN IN RIGHT OF ONTARIO (MINISTER OF LABOUR), THE OLRB AND SUSAN CATERINA .....(Jan.)

83

Judicial Review - Health and Safety - Employee citing second-hand tobacco smoke in work

refusal - Board finding health and safety not real reason for refusal and that employer discipline not unlawful in circumstances - Complaint dismissed - Employee seeking judicial review on ground that members' conduct give rise to reasonable apprehension of bias - Employee issuing summons to witness to Board member to secure evidence for use in judicial review application - Motions court judge concluding that summons an abuse of process and quashing it - Three-judge panel of Divisional Court upholding decision of motions judge and dismissing motion to set decision aside

BOEING CANADA/DE HAVILLAND DIVISION AND SUSAN A. TACON, JOHN A. RONSON AND DAVID A. PATTERSON AND OLRB; RE JILL BETTES ....(Mar.)

275

Jurisdictional Complaint - Construction Industry - Labourers' union and Carpenters' union disputing assignment of work consisting of releasing, removal and dismantling of formwork built in connection with power plant foundation walls, heat recovery steam generator foundation piers, various machine base foundations, turbine bases and other piers - Board not finding trade agreement relied on by Labourers' to be helpful in deciding dispute - Factors of collective bargaining relationships, skill and ability, and economy and efficiency not clearly favouring either trade - Work in dispute assigned to Carpenters' union

NICHOLLS RADTKE LIMITED, CJA, LOCAL 446; RE LIUNA, LOCAL UNION 1036.....(Dec.)

1343

Jurisdictional Dispute - Adjournment - Construction Industry - Evidence - Judicial Review - Natural Justice - Practice and Procedure - Witness - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to members of Sheet Metal Workers' union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers' union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists - Carpenters' union applying for judicial review on grounds of alleged denial of natural justice - Sheet Metal Workers' union moving to strike affidavit filed by Carpenters' union in judicial review application - Divisional Court dismissing motion to strike affidavit

VIC WEST STEEL, CJA, LOCAL 1256; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE AND SMW, LOCAL 539; RE ONTARIO SHEET METAL AND AIR HANDLING GROUP .....(Nov.)

1243

Jurisdictional Dispute - Adjournment - Construction Industry - Practice and Procedure - Sector Determination - Board declining to defer complaint to arbitration proceedings under the agreement between Labourers and Carpenters unions - Board denying request to make determination as to which sector of the construction industry the work in dispute falls into before proceeding with the merits of the jurisdictional dispute - Parties directed to file additional material according to timetable set by the Board

ELLIS-DON LIMITED, THE JACKSON-LEWIS COMPANY LIMITED, EASTERN CONSTRUCTION COMPANY LIMITED AND KONVEY CONSTRUCTION LIMITED; RE C.J.A., LOCAL 27, AND L.I.U.N.A., LOCAL 183 .....(Feb.)

120

Jurisdictional Dispute - Adjournment - Evidence - Practice and Procedure - Witness - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood -

Board confirming assignment to members of Sheet Metal Workers union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists

VIC WEST STEEL, CJA, LOCAL 1256; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE AND SMW, LOCAL 539; RE ONTARIO SHEET METAL AND AIR HANDLING GROUP .....(Mar.) 256

Jurisdictional Dispute - Adjournment - Practice and Procedure - Sector Determination - Carpenters' and Labourers' unions disputing assignment of carpentry portion of concrete forming work in relation to various outdoor concrete structures, including retaining walls, seating walls, planters and curbs - Labourers' union raising "sector" issue and arguing that "consultation" should be adjourned so that full hearing into sector issue can be held and notice given to all parties - Board satisfied that it can determine sector issue for purpose of jurisdictional dispute proceedings on basis of material before it and consultation with parties - Board satisfied that work in dispute falling in ICI sector and not in "landscaping" sector as submitted by Labourers' union - Board satisfied that trade agreement between Carpenters' and Labourers' union and that area practice supporting Carpenters' union claim - Board directing that work in dispute be assigned to Carpenters' union

ELLIS-DON LIMITED, THE JACKSON-LEWIS COMPANY LIMITED AND EASTERN CONSTRUCTION COMPANY LIMITED; RE CJA, LOCAL 27, AND LIUNA, LOCAL 183 .....(Nov.) 1130

Jurisdictional Dispute - Construction Industry - Construction Industry Grievance - Damages - Remedies - Board earlier deciding jurisdictional dispute in favour of Sheet Metal Workers' union - Union seeking compensatory damages through grievance and arbitration under section 126 of the *Act* - Board determining that collective agreement precluding it from awarding damages in this case involving first time error in assigning work where mark-up meeting had been held - Work not falling within "same employer and same work" exception in collective agreement - Board finding that no damages owed

THE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION, BRUCE NUCLEAR POWER DEVELOPMENT; RE SMW, LOCAL 473.....(Dec.) 1392

Jurisdictional Dispute - Construction Industry - CUPE and IBEW disputing work assignment involving installation of fibre optic and twisted pair copper cable at nuclear generating station - Board considering the competing collective agreements, skill and ability of the workforces, employer preference and employer's past practice within the province - Board determining that work should be assigned to IBEW

ONTARIO HYDRO AND CUPE, LOCAL 1000; RE IBEW, LOCAL UNION 1788.....(Nov.) 1167

Jurisdictional Dispute - Construction Industry - Evidence - Practice and Procedure - Labourers' union and Carpenters' union disputing assignment of certain work in context of demolition project - Work in dispute involving erection of wooden hoarding with canopy around site of building to be demolished, with hoarding to remain throughout construction of new building on same site - Board considering how 1986 Labourers' designation to represent "construction labourers" engaged in demolition in ICI sector impacting on work assignment dis-

putes - Board determining that it ought to look initially to demolition project evidence (as opposed to evidence of all types of ICI work) within Board Area in question - Only where this practice evidence is insufficient to enable Board to dispose of matter will Board look to other ICI practice with the Board Area - Board directing that disputed work be assigned to Carpenters' union

DELSAN DEMOLITION LIMITED, CJA, LOCAL 494 AND; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL AND THE LIUNA, LOCAL 625..... (Oct.)

963

Jurisdictional Dispute - Construction Industry - Evidence - Practice and Procedure - Reconsideration - Timeliness - Board making final order in jurisdictional dispute complaint following consultation with parties -Labourer's union requesting reconsideration and arguing that Board improperly refused to hear certain evidence, that there was no evidence to support certain findings, and that Board misinterpreted material before it - Board explaining its approach to requests for reconsideration given need for finality in its adjudication - Board also explaining new "consultation" procedure for resolving jurisdictional dispute complaints - Board finding no reason to reconsider its disposition of the complaint - EPSCA's separate reconsideration request dismissed as untimely under Rule 85 and on its merits

ONTARIO HYDRO, EPSCA, LIUNA, LOCAL 1059; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE, SMW, LOCAL 473..... (May)

442

Jurisdictional Dispute - Construction Industry - Ironworkers' union and Millwrights' union disputing assignment of work in connection with material handling systems - Board satisfied that work in dispute should be assigned to composite crew, consisting of equal members of Ironworkers and Millwrights performing the work functions interchangeably - Board emphasizing that its decision not intended to apply to all "in-plant" construction work

THE STATE GROUP LIMITED, STATE CONTRACTORS INC., MILLWRIGHTS DISTRICT COUNCIL OF ONTARIO, MILLWRIGHTS LOCAL 1244, CJA, ONTARIO ERECTORS ASSOCIATION INCORPORATED, ASSOCIATION OF MILLWRIGHTING CONTRACTORS OF ONTARIO; RE IRONWORKERS' DISTRICT COUNCIL OF ONTARIO AND THE BSOIW, LOCAL 700..... (Dec.)

1397

Jurisdictional Dispute - Construction Industry - Practice and Procedure - Board rejecting Millwrights' union's assertion that jurisdictional dispute ought to be withdrawn or dismissed on basis that there was no longer a "demand" for work in dispute as a result of a settlement between employer and Ironworkers' union - Board dealing with entire chain of disputed work associated with material handling conveyor systems, including tagging, dismantling or disconnecting, the transporting of the dismantled systems, and their installation or reconnection at the new site - Board satisfied that correct assignment was to composite crew consisting of equal numbers of Ironworkers and Millwrights - Order to be binding upon all other jobs undertaken in the future in Board Area #1 - Board declining Ironworkers' request that orders be binding with respect to Board Areas #2 and #3

COMSTOCK CANADA, A DIVISION OF LUNDRIGANS-COMSTOCK LIMITED, MILLWRIGHTS' DISTRICT COUNCIL OF ONTARIO, MILLWRIGHTS, LOCAL 1244, CJA, MILLWRIGHTS, LOCAL 1592, CJA; RE IRONWORKERS' DISTRICT COUNCIL OF ONTARIO AND BSOIW, LOCAL 700..... (Aug.)

740

Jurisdictional Dispute - Nurses' union complaining about assignment of work, including administration of medications and other nursing duties, to RNAs - Employer directed to restore assignment of disputed work to those covered by nurses' collective agreement

PIONEER MANOR - HOME FOR THE AGED, THE REGIONAL MUNICIPALITY OF SUDBURY; RE ONA AND CUPE, LOCAL 148..... (May)

447

Jurisdictional Dispute - Practice and Procedure - Parties disputing assignment of work in connection with removal for scrap of exterior metal siding - Board declaring that work in dispute

should be assigned to Sheet Metal Workers' union - Board observing that "kitchen sink" approach to preparation of briefs in jurisdictional dispute complaints not particularly helpful - Board noting that parties in this case could properly have focused on the practice relating specifically to the work in dispute and the application of the employer's policy with respect to the assignment of such work

ONTARIO HYDRO, EPSCA, LIUNA, LOCAL 1059; RE ONTARIO SHEET METAL WORKERS' & ROOFERS' CONFERENCE, SMW, LOCAL 473.....(Mar.) 227

Just Cause - Discharge - Evidence - Unfair Labour Practice - Employee alleging discharge without just cause contrary to section 81.2 of the *Act* - Employer alleging that discharge justified in view of culminating incident - Board permitting employer to rely on prior employment record where employer prepared to prove misconduct making up that record - Board finding discharge penalty just and reasonable in circumstances - Application dismissed

THE BRICK WAREHOUSE CORPORATION; RE WILLIAM HODGSKISS.....(Nov.) 1206

Lock-Out - Canadian Stagehands' Association (CSA) complaining about arrangement whereby City of Ottawa will only rent its facilities to promoters having collective bargaining relationship with rival union (IATSE) or who agree to use IATSE members for stage hand work - Board not accepting CSA's contention that arrangement causing illegal lock-out for which relief available against City or promoters

BASS CLEF, CORPORATION OF THE CITY OF OTTAWA ["THE CITY"] AND; RE CANADIAN STAGEHANDS ASSOCIATION ["CSA"]; RE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, LOCAL 471 ["IATSE"]. (Oct.) 923

Lock-Out - Combination of Bargaining Units - Interim Relief - Remedies - Strike - Union seeking interim order prohibiting otherwise lawful strikes or lock-outs pending disposition of application to combine bargaining units - Board not finding reasons advanced for order sought sufficient to justify its imposition

THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF OTTAWA; RE IBEW, LOCAL 636.....(Nov.) 1231

Lockout - Damages - Duty to Bargain in Good Faith - Final Offer Vote - Interference in Trade Unions - Judicial Review - Natural Justice - Remedies - Unfair Labour Practice - Employer engaging in illegal lockout by transferring bargaining unit work to another company immediately before strike/lockout deadline - Work transfer motivated at least in part by desire to avoid union - Employer breaching duty to bargain in good faith by sending uninformed representatives to bargaining table, by failing to disclose contemplated transfer of work, and by bargaining directly with employees hired to work at other company - Direct bargaining constituting interference in trade union - Employer demand for employee consent to release of addresses for final offer vote constituting interference in trade union - Board ordering employer to cease and desist from violations of *Act* - Board ordering resumption of bargaining meetings - Board ordering employer to compensate all bargaining unit employees for monetary losses arising out of breaches - Board ordering employer to pay union's negotiating costs - Board ordering employer to return work to original company and make no further movement without disclosure to union - Board ordering employer to provide union with names and addresses of bargaining unit employees as of lockout date and to advise of additions or changes - Board ordering workplace Notice of Posting signed personally by employer - Board ordering copy of decision to be mailed to all bargaining unit employees - Employer applying for judicial review and submitting that Board exceeded its

jurisdiction and breached rules of natural justice - Judicial review application dismissed by Divisional Court

PLAZA FIBREGLAS MANUFACTURING LIMITED, PLAZA ELECTRO-PLATING LTD., CITCOR MANUFACTURING LTD. AND SABINA CITRON; RE: ONTARIO LABOUR RELATIONS BOARD AND UNITED STEELWORKERS OF AMERICA.....(Jan.)

83

Membership Evidence - Bargaining Unit - Certification - Charges - Evidence - Intimidation and Coercion - Petition - Board relying on section 8(4) of the Act and Rule 47 of the Rules of Procedure in declining to receive untimely employee evidence of objection - Employer and objecting employees raising allegations with respect to method of collection of memberships by union - Board declining to inquire into certain matters not sufficiently particularized and determining that other allegations not causing Board to doubt reliability of membership evidence - Board applying *Hospital for Sick Children* test and determining that employees of separate division or department properly falling within applied for bargaining unit - Interim certificate issuing

SHRADER CANADA LIMITED; RE UNITED STEELWORKERS OF AMERICA; RE GROUP OF EMPLOYEES.....(Mar.)

246

Membership Evidence - Certification - Charges - Intimidation and Coercion - Practice and Procedure - Following making of union's certification application, employee alleging forgery on one of cards submitted with application - Union investigating and seeking to withdraw application - Union making subsequent certification application and requesting that Board transfer some of membership evidence filed in first application to subsequent application - Employer wishing membership evidence collected in first application to be declared of no value and seeking to have its allegations of intimidation heard - Employer also seeking bar on future certification applications - Board permitting first application to be withdrawn without imposing bar - Employer free to pursue allegations of intimidation in subsequent certification application

CIRCLET FOOD INC.; RE USWA ..... (May)

406

Membership Evidence - Certification - Charges - Board certifying union following waiver of hearing by parties - Employer subsequently making "non-sign" allegation - Registrar advising employer that, having investigated allegation, Board seeing no basis for proceeding further - Employer seeking reasons for Board's decision not to proceed - Board explaining its procedure with respect to "non-sign" or "doubtful signature" investigations and its requirement of *prima facie* case - Revealing basis for Board's conclusion regarding existence of *prima facie* case in any particular case would be inconsistent with confidentiality provisions of the *Act* regarding employee wishes concerning union representation

BILOW'S RACEWAY AUTO PARTS INC.; RE UFCW, LOCAL 175..... (May)

397

Membership Evidence - Certification - Evidence - Fraud - Union withdrawing earlier certification application after discovering that membership cards submitted to Board had been "pre-witnessed" by in-plant collector - Employer submitting that subsequent certification application "tainted" by continued participation of collector in organizing campaign - Irregularity in collection of membership evidence in first application not constituting "fraud" on the Board - Board finding no reason to doubt reliability of membership evidence filed in subsequent application

TRANSCOR INC.; RE SEU, LOCAL 183.....(Nov.)

1233

Natural Justice - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and

applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Single judge of Divisional Court granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Court dismissing motion to produce various reports and documents - Board bringing motion before panel of Divisional Court to set aside order of single judge - At opening of hearing, respondent moving to have member of the panel disqualified on basis of "apprehended bias" - Respondent's motion dismissed

ELLIS-DON LIMITED; RE OLRB AND I.B.E.W., LOCAL 894 .....(Jan.) 80

Natural Justice - Adjournment - Certification - Charter of Rights and Freedoms - Constitutional Law - Evidence - Practice and Procedure - Representation Vote - Board declining to hear objecting employees' Charter argument where notice not given to Attorney-General - Board declining to adjourn hearing so that notice to Attorney-General could be given - Board applying *Hemlo Gold Mines* case and affirming that "application date" in section 8(4) of the Act means date on which application is filed and holding that this interpretation involves no denial of natural justice - Board declining to hear employees' *viva voce* evidence in connection with discretion to order representation vote - Board's discretion under section 8(3) of the Act should be exercised in way that recognizes that statutory scheme based primarily on documentary evidence of membership - Proffered evidence would not affect Board's of discretion in circumstances of this case

SHAW INDUSTRIES LTD. C.O.B. AS CANUSA (A DIVISION OF SHAW INDUSTRIES LTD.); RE IWA - CANADA; RE GROUP OF EMPLOYEES.....(Aug.) 798

Natural Justice - Adjournment - Construction Industry - Evidence - Judicial Review - Jurisdictional Dispute - Practice and Procedure - Witness - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to members of Sheet Metal Workers' union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters' union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers' union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists - Carpenters' union applying for judicial review on grounds of alleged denial of natural justice - Sheet Metal Workers' union moving to strike affidavit filed by Carpenters' union in judicial review application - Divisional Court dismissing motion to strike affidavit

VIC WEST STEEL, CJA, LOCAL 1256; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE AND SMW, LOCAL 539; RE ONTARIO SHEET METAL AND AIR HANDLING GROUP .....(Nov.) 1243

Natural Justice - Certification - Charter of Rights and Freedoms - Constitutional Law - Judicial Review - Petition - Representation Vote - Group of objecting employees filing "petition" in opposition to union after certification application filing date - Objecting employees asking Board to extend application filing date to allow timely filing of petition, and to conduct certification hearing in Thunder Bay - Objecting employees also challenging constitutional

validity of section 8(4) of the *Act* and Rule 47 of the Board's Rules of Procedure, and asserting violation of rules of natural justice - Board dismissing various objecting employees' objections in oral ruling - Objecting employees then seeking to have application dismissed on grounds of reasonable apprehension of bias - Board finding no reasonable apprehension of bias and dismissing motion - Company's request that Board exercise its discretion under section 8(3) of the *Act* to direct representation vote denied - Union enjoying support in excess of 55% in appropriate bargaining unit - Certificate issuing - Divisional Court dismissing objecting employees' judicial review application

HEMLO GOLD MINES INC., USWA AND; RE LAROY MACKENZIE AND WAYNE MACKENZIE ET AL. ALSO KNOWN AS EMPLOYEES OF HEMLO GOLD MINES INC. FOR A DEMOCRATIC CHOICE ..... (May)

471

Natural Justice - Certification - Charter of Rights and Freedoms - Constitutional Law - Petition - Representation Vote - Group of objecting employees filing "petition" in opposition to union after certification application filing date - Objecting employees asking Board to extend application filing date to allow timely filing of petition, and to conduct certification hearing in Thunder Bay - Objecting employees also challenging constitutional validity of section 8(4) of the *Act* and Rule 47 of the Board's Rules of Procedure, and asserting violation of rules of natural justice - Board dismissing various objecting employees' objections in oral ruling - Objecting employees then seeking to have application dismissed on grounds of reasonable apprehension of bias - Board finding no reasonable apprehension of bias and dismissing motion - Company's request that Board exercise its discretion under section 8(3) of the *Act* to direct representation vote denied - Union enjoying support in excess of 55% in appropriate bargaining unit - Certificate issuing

HEMLO GOLD MINES INC.; RE UNITED STEELWORKERS OF AMERICA; RE GROUP OF EMPLOYEES ..... (Mar.)

158

Natural Justice - Damages - Duty to Bargain in Good Faith - Final Offer Vote - Interference in Trade Unions - Judicial Review - Lockout - Remedies - Unfair Labour Practice - Employer engaging in illegal lockout by transferring bargaining unit work to another company immediately before strike/lockout deadline - Work transfer motivated at least in part by desire to avoid union - Employer breaching duty to bargain in good faith by sending uninformed representatives to bargaining table, by failing to disclose contemplated transfer of work, and by bargaining directly with employees hired to work at other company - Direct bargaining constituting interference in trade union - Employer demand for employee consent to release of addresses for final offer vote constituting interference in trade union - Board ordering employer to cease and desist from violations of Act - Board ordering resumption of bargaining meetings - Board ordering employer to compensate all bargaining unit employees for monetary losses arising out of breaches - Board ordering employer to pay union's negotiating costs - Board ordering employer to return work to original company and make no further movement without disclosure to union - Board ordering employer to provide union with names and addresses of bargaining unit employees as of lockout date and to advise of additions or changes - Board ordering workplace Notice of Posting signed personally by employer - Board ordering copy of decision to be mailed to all bargaining unit employees - Employer applying for judicial review and submitting that Board exceeded its jurisdiction and breached rules of natural justice - Judicial review application dismissed by Divisional Court

PLAZA FIBREGLAS MANUFACTURING LIMITED, PLAZA ELECTRO-PLATING LTD., CITCOR MANUFACTURING LTD. AND SABINA CITRON; RE: ONTARIO LABOUR RELATIONS BOARD AND UNITED STEELWORKERS OF AMERICA ..... (Jan.)

83

Natural Justice - Interference in Trade Unions - Practice and Procedure - Unfair Labour Practice - Board dismissing motion alleging that manner in which hearing conducted by panel denying natural justice - Board finding that discipline by employer of union executive member

for engaging in legitimate and protected union activity violating the *Act* - Employer directed to rescind discipline

THE CORPORATION OF THE CITY OF HAMILTON; CUPE, LOCAL 5.....(Nov.) 1214

Parties - Adjournment - Build-Up - Certification - Representation Vote - Sale of a Business - Security Guards - Union making certification application in June 1993 in respect of employees of H - H's contract to provide security services not renewed and W providing those services effective July 1993 - W a successor employer within meaning of section 64.2 of the *Act* - Board permitting W to participate in certification proceeding over union's objection - Board declining to adjourn proceeding to allow union to investigate alleged "freeze" violation by W - Number of positions in bargaining unit increasing from 11 on certification application date to 13 on date of hearing - Board ruling that "build-up" principle not applicable in this case - W and H asking Board to direct representation vote on basis of change in composition of bargaining unit since application date - Employees at work on application date sufficiently representative of work force on hearing date that Board finding it appropriate to determine application based on assessment of wishes of those employees without representation vote - Interim certificate issuing

HAWK SECURITY SYSTEMS LTD.; RE USWA; RE WAKENHUT OF CANADA LIMITED.....(Aug.) 751

Parties - Adjournment - Construction Industry - Damages - Discharge - Practice and Procedure - Remedies - Unfair Labour Practice - Board denying adjournment where request coming in the form of fax to Board on eve of hearing accompanied by unsatisfactory, two-month old medical certificate - Board satisfied that lay-offs motivated, at least in part, by anti-union *animus* - Owner found personally liable for breaches of the *Act* in addition to breaches of the *Act* committed by corporate respondent - Corporate and individual respondents jointly and severally liable for damages assessed at over \$24,000 payable to union on its own behalf and on behalf of members who grieved

CLASSIC MASONRY INC. AND LOUIS TRINDADE; RE B.A.C., LOCAL 5 ...(Aug.) 721

Parties - Bargaining Rights - Collective Agreement - Construction Industry - Practice and Procedure - Unfair Labour Practice - Board satisfied that applicants having status to bring complaint and that application ought not to be dismissed on basis of asserted delay - London Construction Association alleging that purported collective agreement between London Concrete Forming Contractors and Labourers' union violating section 148 of the *Act* - Applicant requesting that Board declare agreement to be void as it relates to ICI sector of the construction industry - Ontario Formwork Agreement a product of bargaining relationship specifically exempted from section 148(2) of the *Act* and Board satisfied that impugned agreement binding London Contractors to that agreement - Application dismissed

LONDON AND DISTRICT CONSTRUCTION ASSOCIATION AND LABOUR RELATIONS BUREAU OF THE ONTARIO GENERAL CONTRACTORS ASSOCIATION; RE LIUNA, LOCAL 1059; RE CONCRETE FORMING (1980) LIMITED, ROCKWELL CONCRETE FORMING (LONDON) LIMITED, WALLOY MATERIALS LIMITED, FOREST CITY FORMING LTD., LIDER GENERAL CONSTRUCTION LTD., O.S. CONCRETE FORMING INC., CO-FO CONCRETE FORMING LIMITED.....(Dec.) 1320

Parties - Certification - Collective Agreement - Reconsideration - Timeliness - Labourers' union seeking reconsideration of decision to grant early termination of collective agreement between CLAC and employer on ground that posting of Notice to Employees was inadequate - Labourers' union filing certification application in what would otherwise have been open period of collective agreement - Labourers' union having sufficient interest to justify granting standing in its own right to seek reconsideration of early termination decision - Board finding posting of Notice to Employees inadequate - Institutional interest of Board

in providing adequate notice to affected employees outweighing reliance interest of company and CLAC on finality of Board's early termination decision - Reconsideration application allowed - Upon counting of ballots, Labourers' certification application dismissed

LEDCOR INDUSTRIES LIMITED; RE CHRISTIAN LABOUR ASSOCIATION OF CANADA .....(Aug.)

758

Parties - Construction Industry - Duty of Fair Referral - Practice and Procedure - Unfair Labour Practice - Business manager neither a necessary nor a proper party - Board granting respondent's motion to dismiss application as against union's business manager - Union's business representative and business manager referring out-of-work members on basis of their subjective and personal opinions of members' qualifications, abilities and interests - Union found to have contravened its own hiring hall working rules and section 70 of the *Act* - Complaint allowed and compensation ordered

STEVEN SHEPPARD; RE BRIAN CHRISTIE, UA, LOCAL 463 ..... (June)

555

Petition - Bargaining Unit - Certification - Charges - Evidence - Intimidation and Coercion - Membership Evidence - Board relying on section 8(4) of the *Act* and Rule 47 of the Rules of Procedure in declining to receive untimely employee evidence of objection - Employer and objecting employees raising allegations with respect to method of collection of memberships by union - Board declining to inquire into certain matters not sufficiently particularized and determining that other allegations not causing Board to doubt reliability of membership evidence - Board applying *Hospital for Sick Children* test and determining that employees of separate division or department properly falling within applied for bargaining unit - Interim certificate issuing

SHRADER CANADA LIMITED; RE UNITED STEELWORKERS OF AMERICA; RE GROUP OF EMPLOYEES .....(Mar.)

246

Petition - Certification - Charges - Evidence - Intimidation and Coercion - Practice and Procedure - Witness - Board reviewing principles governing restricted scope of reply evidence and declining to permit employer to split its case by calling one witness to events in dispute during its case in chief, and the other witness during reply - Board concluding that timely petition not a voluntary expression of employee wishes - Board finding no intimidation or other improper conduct by union casting doubt on union's membership evidence - Certificate issuing

TATE ANDALE CANADA INC.; RE UNITED STEELWORKERS OF AMERICA ..... (Apr.)

383

Petition - Certification - Charter of Rights and Freedoms - Constitutional Law - Judicial Review - Natural Justice - Representation Vote - Group of objecting employees filing "petition" in opposition to union after certification application filing date - Objecting employees asking Board to extend application filing date to allow timely filing of petition, and to conduct certification hearing in Thunder Bay - Objecting employees also challenging constitutional validity of section 8(4) of the *Act* and Rule 47 of the Board's Rules of Procedure, and asserting violation of rules of natural justice - Board dismissing various objecting employees' objections in oral ruling - Objecting employees then seeking to have application dismissed on grounds of reasonable apprehension of bias - Board finding no reasonable apprehension of bias and dismissing motion - Company's request that Board exercise its discretion under section 8(3) of the *Act* to direct representation vote denied - Union enjoying support in excess of 55% in appropriate bargaining unit - Certificate issuing - Divisional Court dismissing objecting employees' judicial review application

HEMLO GOLD MINES INC., USWA AND; RE LAROY MACKENZIE AND WAYNE MACKENZIE ET AL. ALSO KNOWN AS EMPLOYEES OF HEMLO GOLD MINES INC. FOR A DEMOCRATIC CHOICE ..... (May)

471

- Petition - Certification - Charter of Rights and Freedoms - Constitutional Law - Natural Justice - Representation Vote - Group of objecting employees filing "petition" in opposition to union after certification application filing date - Objecting employees asking Board to extend application filing date to allow timely filing of petition, and to conduct certification hearing in Thunder Bay - Objecting employees also challenging constitutional validity of section 8(4) of the *Act* and Rule 47 of the Board's Rules of Procedure, and asserting violation of rules of natural justice - Board dismissing various objecting employees' objections in oral ruling - Objecting employees then seeking to have application dismissed on grounds of reasonable apprehension of bias - Board finding no reasonable apprehension of bias and dismissing motion - Company's request that Board exercise its discretion under section 8(3) of the *Act* to direct representation vote denied - Union enjoying support in excess of 55% in appropriate bargaining unit - Certificate issuing
- HEMLO GOLD MINES INC.; RE UNITED STEELWORKERS OF AMERICA; RE GROUP OF EMPLOYEES .....(Mar.) 158
- Picketing - Abandonment - Bargaining Rights - Conciliation - Construction Industry - Evidence - Strike - Employer asserting that threatened strike unlawful on ground that union had previously abandoned bargaining rights - Threatened strike following timely "notice to bargain", appointment of conciliation officer and issuance of "no board" report - Board declining to inquire into continued existence of bargaining rights in circumstances of this case - Board also not accepting employer's assertion that threatened picketing by union improperly motivated and, therefore, unlawful - Application dismissed
- ASSOCIATED CONTRACTING INC.; RE MICHAEL GALLAGHER AND IUOE, LOCAL 793 .....(Nov.) 1117
- Picketing - Strike Replacement Workers - Right of Access - Unfair Labour Practice - Board finding that company violated section 73.1 of the *Act* by using prohibited replacement workers to perform work where employees on strike - Board making cease and desist order and directing that its decision be posted on outside of each struck store - Board declining company's request for restrictions on picketing under section 11.1 of the *Act* - Board noting that picketing had generally been peaceful, that section 11.1 contemplating some disruption without giving rise to restrictions, and that company made little attempt to utilize other means of assistance available to it
- THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED; RE UFCW, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK AND CLIFF SKINNER .....(Nov.) 1230
- Practice and Procedure - Adjournment - Arbitration - Intimidation and Coercion - Unfair Labour Practice - Board adjourning applicant's unfair labour practice complaint *sine die* pending completion of arbitration process - Board to deal with case after arbitrator's decision if necessary to do so - Board directing that copies of its decision be posted in workplace
- FORTINOS SUPERMARKET LIMITED; RE ERROL MCKENZIE KETTELL; RE UFCW, LOCALS 175/633 ..... (Oct.) 974
- Practice and Procedure - Adjournment - Certification - Charter of Rights and Freedoms - Constitutional Law - Evidence - Natural Justice - Representation Vote - Board declining to hear objecting employees' Charter argument where notice not given to Attorney-General - Board declining to adjourn hearing so that notice to Attorney-General could be given - Board applying *Hemlo Gold Mines* case and affirming that "application date" in section 8(4) of the *Act* means date on which application is filed and holding that this interpretation involves no denial of natural justice - Board declining to hear employees' *viva voce* evidence in connection with discretion to order representation vote - Board's discretion under section

8(3) of the *Act* should be exercised in way that recognizes that statutory scheme based primarily on documentary evidence of membership - Proffered evidence would not affect Board's of discretion in circumstances of this case

SHAW INDUSTRIES LTD. C.O.B. AS CANUSA (A DIVISION OF SHAW INDUSTRIES LTD.); RE IWA - CANADA; RE GROUP OF EMPLOYEES.....(Aug.)

798

Practice and Procedure - Adjournment - Construction Industry - Construction Industry Grievance - Board granting adjournment request made by first responding employer but scheduling continuation dates peremptory to all responding parties - First responding employer directed to reimburse applicants for their share of section 126(4) expenses incurred with respect to adjourned hearing

ONTARIO PAVING CONSTRUCTION LIMITED; RE IUOE, LOCAL 793 .....(July)

630

Practice and Procedure - Adjournment - Construction Industry - Construction Industry Grievance - Interim Relief - Board noting that real dispute concerning geographic jurisdiction and concomitant right to work under applicable ICI provincial agreement of Labourers' union locals 247 and 527 - Board adjourning proceeding and directing filing of detailed pleadings, including complete representations in support of the respective positions - Board issuing interim order under section 45(8) of the *Act* regarding right of certain contractors to assign work to members of locals 247 and 527 pending Board's final determination of grievance

BELLAI BROTHERS LTD.; RE L.I.U.N.A., LOCAL 247; RE L.I.U.N.A., LOCAL 527 .....(Aug.)

717

Practice and Procedure - Adjournment - Construction Industry - Damages - Discharge - Parties - Remedies - Unfair Labour Practice - Board denying adjournment where request coming in the form of fax to Board on eve of hearing accompanied by unsatisfactory, two-month old medical certificate - Board satisfied that lay-offs motivated, at least in part, by anti-union *animus* - Owner found personally liable for breaches of the *Act* in addition to breaches of the *Act* committed by corporate respondent - Corporate and individual respondents jointly and severally liable for damages assessed at over \$24,000 payable to union on its own behalf and on behalf of members who grieved

CLASSIC MASONRY INC. AND LOUIS TRINDADE; RE B.A.C., LOCAL 5 ...(Aug.)

721

Practice and Procedure - Adjournment - Construction Industry - Evidence - Judicial Review - Jurisdictional Dispute - Natural Justice - Witness - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to members of Sheet Metal Workers' union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters' union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers' union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists - Carpenters' union applying for judicial review on grounds of alleged denial of natural justice - Sheet Metal Workers' union moving to strike affidavit filed by Carpenters' union in judicial review application - Divisional Court dismissing motion to strike affidavit

VIC WEST STEEL, CJA, LOCAL 1256; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE AND SMW, LOCAL 539; RE ONTARIO SHEET METAL AND AIR HANDLING GROUP .....(Nov.)

1243

- Practice and Procedure - Adjournment - Construction Industry - Jurisdictional Dispute - Sector Determination - Board declining to defer complaint to arbitration proceedings under the agreement between Labourers and Carpenters unions - Board denying request to make determination as to which sector of the construction industry the work in dispute falls into before proceeding with the merits of the jurisdictional dispute - Parties directed to file additional material according to timetable set by the Board
- ELLIS-DON LIMITED, THE JACKSON-LEWIS COMPANY LIMITED, EASTERN CONSTRUCTION COMPANY LIMITED AND KONVEY CONSTRUCTION LIMITED; RE C.J.A., LOCAL 27, AND L.I.U.N.A., LOCAL 183 ..... (Feb.) 120
- Practice and Procedure - Adjournment - Discharge - Environmental Protection Act - Evidence - Health and Safety - Settlement - Employer seeking adjournment pending disposition of application in Ontario Court (General Division) for declaration that enforceable settlement entered into by the parties - Adjournment request denied - Board dismissing objection to anticipated evidence of complainant's former counsel - Evidence of communications between solicitors in furtherance of settlement not privileged where existence of agreement constituting issue in dispute - Board finding complaint settled in absence of signed documents confirming settlement and declining to inquire further into complaint
- FUJI HUNT PHOTOGRAPHIC CHEMICALS LTD., FUJI PHOTO FILM CANADA INC. AND FUJI PHOTO FILM CO. LTD.; RE FRED NICHOLAS ..... (June) 494
- Practice and Procedure - Adjournment - Employee Reference - Board cancelling oral hearing scheduled to receive representations with respect to Officer's Report - Parties directed to make written representations - Board to make appropriate determinations on basis of evidence recorded in Officer's Report and parties' representations
- MARC MECHANICAL LIMITED; RE LOCAL 47 SMW ..... (May) 441
- Practice and Procedure - Adjournment - Evidence - Jurisdictional Dispute - Witness - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to members of Sheet Metal Workers union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists
- VIC WEST STEEL, CJA, LOCAL 1256; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE AND SMW, LOCAL 539; RE ONTARIO SHEET METAL AND AIR HANDLING GROUP ..... (Mar.) 256
- Practice and Procedure - Adjournment - Evidence - Unfair Labour Practice - Board declining to adjourn unfair labour practice complaint pending resolution of employment status issue - Board declining to dismiss application for want of particulars - Board declining to dismiss application for failure to raise *prima facie* case - Board directing responding party to proceed first with its evidence
- THE ESSEX COUNTY BOARD OF EDUCATION; RE OSSTF ..... (July) 687
- Practice and Procedure - Adjournment - Jurisdictional Dispute - Sector Determination - Carpenters' and Labourers' unions disputing assignment of carpentry portion of concrete forming

work in relation to various outdoor concrete structures, including retaining walls, seating walls, planters and curbs - Labourers' union raising "sector" issue and arguing that "consultation" should be adjourned so that full hearing into sector issue can be held and notice given to all parties - Board satisfied that it can determine sector issue for purpose of jurisdictional dispute proceedings on basis of material before it and consultation with parties - Board satisfied that work in dispute falling in ICI sector and not in "landscaping" sector as submitted by Labourers' union - Board satisfied that trade agreement between Carpenters' and Labourers' union and that area practice supporting Carpenters' union claim - Board directing that work in dispute be assigned to Carpenters' union

ELLIS-DON LIMITED, THE JACKSON-LEWIS COMPANY LIMITED AND EASTERN CONSTRUCTION COMPANY LIMITED; RE CJA, LOCAL 27, AND LIUNA, LOCAL 183 ..... (Nov.)

1130

Practice and Procedure - Adjournment - Unfair Labour Practice - Parties agreeing to *sine die* adjournment of unfair labour practice complaint in which union had requested expedited hearing under section 92.2 of the *Act* - Board taking union's adjournment request to be withdrawal of request for expedited hearing - Board granting *sine die* adjournment, but for period not to exceed three months

COOPER INDUSTRIES (CANADA) INC. C.O.B. AS WAGNER DIVISION OF COOPER INDUSTRIES (CANADA) INC.; RE UNITED STEELWORKERS OF AMERICA ..... (Mar.)

157

Practice and Procedure - Bargaining Rights - Certification - Termination - Timeliness - Union responding to employer application to terminate bargaining rights under section 60 of the *Act* by consenting to Board order terminating bargaining rights - Union applying for certification in respect of same bargaining unit two weeks later - Board rejecting employer's argument that it ought to refuse to entertain union's certification application and that any new certification application should be barred for six months - Certificate issuing

CRANE CANADA INC.; RE LIUNA, LOCAL 247 ..... (Oct.)

957

Practice and Procedure - Bargaining Rights - Collective Agreement - Construction Industry - Parties - Unfair Labour Practice - Board satisfied that applicants having status to bring complaint and that application ought not to be dismissed on basis of asserted delay - London Construction Association alleging that purported collective agreement between London Concrete Forming Contractors and Labourers' union violating section 148 of the *Act* - Applicant requesting that Board declare agreement to be void as it relates to ICI sector of the construction industry - Ontario Formwork Agreement a product of bargaining relationship specifically exempted from section 148(2) of the *Act* and Board satisfied that impugned agreement binding London Contractors to that agreement - Application dismissed

LONDON AND DISTRICT CONSTRUCTION ASSOCIATION AND LABOUR RELATIONS BUREAU OF THE ONTARIO GENERAL CONTRACTORS ASSOCIATION; RE LIUNA, LOCAL 1059; RE CONCRETE FORMING (1980) LIMITED, ROCKWELL CONCRETE FORMING (LONDON) LIMITED, WALLOY MATERIALS LIMITED, FOREST CITY FORMING LTD., LIDER GENERAL CONSTRUCTION LTD., O.S. CONCRETE FORMING INC., CO-FO CONCRETE FORMING LIMITED ..... (Dec.)

1320

Practice and Procedure - Bargaining Rights - Construction Industry - Interim Relief - Remedies - Unfair Labour Practice - Bricklayers' union Local 2 alleging that Builders Association, Labourers' union and others committing unfair labour practice by, *inter alia*, agreeing to sub-contracting clause in collective agreement between them requiring bricklaying work to be performed by companies bound to agreement with Labourers' union or Bricklayers' union Local 1 - Local 2 requesting that operation of sub-contracting clause be stayed pending resolution of unfair labour practice complaint - Board commenting on lack of particularity and

absence of supporting facts establishing first-hand knowledge in declaration filed by Local 2 - Board also noting that interim relief applications may be decided without oral hearings and that parties who fail to provide complete written representations, as required by Rule 86, do so at their peril - Only very discrete core of Local 2's complaint supporting arguable case - Board considering delay in starting proceedings - No obvious reason why harm to Local 2 of denying application outweighing harm to responding parties of staying sub-contracting provision - Application for interim order dismissed

METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION AND LIUNA, LOCAL 183; RE BAC, LOCAL 2; RE METROPOLITAN INDUSTRIAL & COMMERCIAL MASONRY CONTRACTORS INC.; RE MASONRY CONTRACTORS ASSOCIATION OF TORONTO INC.....(Mar.) 219

Practice and Procedure - Bargaining Unit - Certification - Employer failing to file timely reply in accordance with Rules of Procedure - Board not permitting employer at hearing to place in issue whether analysts should be excluded from the bargaining unit - Certificate issuing

GALLUP CANADA INC.; RE USWA; RE GROUP OF EMPLOYEES .....(Aug.) 750

Practice and Procedure - Bargaining Unit - Certification - Union amending description of bargaining unit applied for 4 days after application date - Union proposing site specific, rather than municipal unit in amended description - Board reprocessing application in accordance with amended description and extending terminal date - Board dismissing objecting employees' application to reconsider decision to reprocess application - Board rejecting objecting employees' position that amendment constituted new application and that new "application date" be assigned to it - Board rejecting objecting employees' submission that Board's Notice to Employees deficient - Board finding union's proposed unit appropriate

MICHELIN TIRES (CANADA) LTD.; RE GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, LOCAL N-1; RE GROUP OF EMPLOYEES.....(Nov.) 1157

Practice and Procedure - Bargaining Unit - Employee - Employee Reference - Employer objecting to application under section 108(2) of the *Act* on ground that application relates to persons in positions specifically excluded from bargaining unit - Where Board is satisfied that application under section 108(2) raises real "employee" issue, Board will proceed with it, even where "real" issue is whether that person is in the unless there is a cogent reason not to - Board doubting whether section 108(2) giving Board discretion to refuse to entertain application on basis that "real" issue is something else - Board disagreeing with decisions seeming to suggest that Board determination that person not "employee" not necessarily meaning that that person not in the bargaining unit

LONDON FREE PRESS PRINTING COMPANY LIMITED; RE SOUTHERN ONTARIO NEWSPAPER GUILD LOCAL 87, THE NEWSPAPER GUILD (CLC, AFL-CIO) ..... (Oct.) 977

Practice and Procedure - Certification - Charges - Intimidation and Coercion - Membership Evidence - Following making of union's certification application, employee alleging forgery on one of cards submitted with application - Union investigating and seeking to withdraw application - Union making subsequent certification application and requesting that Board transfer some of membership evidence filed in first application to subsequent application - Employer wishing membership evidence collected in first application to be declared of no value and seeking to have its allegations of intimidation heard - Employer also seeking bar on future certification applications - Board permitting first application to be withdrawn without imposing bar - Employer free to pursue allegations of intimidation in subsequent certification application

CIRCLET FOOD INC.; RE USWA ..... (May) 406

Practice and Procedure - Certification - Charges - Evidence - Intimidation and Coercion - Petition

- Witness - Board reviewing principles governing restricted scope of reply evidence and declining to permit employer to split its case by calling one witness to events in dispute during its case in chief, and the other witness during reply - Board concluding that timely petition not a voluntary expression of employee wishes - Board finding no intimidation or other improper conduct by union casting doubt on union's membership evidence - Certificate issuing

TATE ANDALE CANADA INC.; RE UNITED STEELWORKERS OF AMERICA..... (Apr.)

383

Practice and Procedure - Certification - OSSTF filing certification application after certification application brought by Employees Association, but asking Board to apply subsection 105(3)(a) of the *Act* and to treat its application as having been made on same date as Association's application - Board viewing subsection 105(3) in light of s.8 of the *Act* as placing greater emphasis on the application that is first in time - Board directing, pursuant to subsection 105(3)(b), that the application filed first should be considered first and that consideration of the subsequently filed application should be postponed pending the disposition of the first

THE CARLETON BOARD OF EDUCATION; RE CARLETON ADMINISTRATION SUPPORT CERTIFIED EMPLOYEES ASSOCIATION ..... (Feb.)

102

Practice and Procedure - Certification - Union seeking leave to withdraw certification application following emergence of dispute concerning composition of bargaining unit - Board dismissing application - Union filing subsequent certification application - Employer asking Board to exercise its discretion under section 105(1)(i) to not consider subsequent application or, in the alternative, to direct a representation vote - Board declining employer requests - Board granting interim certification

GENERAL SIGNAL LIMITED; RE IBEW, LOCAL 353; RE GROUP OF EMPLOYEES..... (June)

509

Practice and Procedure - Construction Industry - Construction Industry Grievance - Reconsideration - Party seeking reconsideration not using Form A-47 - Reconsideration request not made within 30 day period specified in Rule 85 and containing nothing prompting Board to grant permission for late filing - Request failing to include complete representations or any submissions which responding party did not have opportunity to raise at hearing preceding decision - Reconsideration application denied

MOHAWK SERVICES; RE B.S.O.I.W. LOCAL 721..... (Apr.)

355

Practice and Procedure - Construction Industry - Construction Industry Grievance - Related Employer - Remedies - Responding parties not filing response to application, nor appearing at hearing - Board issuing declaration on the basis of material filed by the union indicating related activities under common control - Board's Rule 19 also permitting Board to deem responding parties to have accepted all facts in the application when responding parties do not file responses as required by the Rules - Related employer liable to pay outstanding amounts under settlement and Board order in previous grievance referral - Board allowing grievance alleging failure to make remittances and awarding damages against both responding parties

LAKERIDGE ACOUSTICS, MALVERN DRYWALL SYSTEMS LTD. AND 950337 ONTARIO INC. C.O.B. AS; RE ONTARIO COUNCIL OF THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 1891..... (Feb.)

137

Practice and Procedure - Construction Industry - Duty of Fair Referral - Parties - Unfair Labour Practice - Business manager neither a necessary nor a proper party - Board granting respondent's motion to dismiss application as against union's business manager - Union's business

representative and business manager referring out-of-work members on basis of their subjective and personal opinions of members' qualifications, abilities and interests - Union found to have contravened its own hiring hall working rules and section 70 of the *Act* - Complaint allowed and compensation ordered

STEVEN SHEPPARD; RE BRIAN CHRISTIE, UA, LOCAL 463 ..... (June) 555

Practice and Procedure - Construction Industry - Evidence - Jurisdictional Dispute - Labourers' union and Carpenters' union disputing assignment of certain work in context of demolition project - Work in dispute involving erection of wooden hoarding with canopy around site of building to be demolished, with hoarding to remain throughout construction of new building on same site - Board considering how 1986 Labourers' designation to represent "construction labourers" engaged in demolition in ICI sector impacting on work assignment disputes - Board determining that it ought to look initially to demolition project evidence (as opposed to evidence of all types of ICI work) within Board Area in question - Only where this practice evidence is insufficient to enable Board to dispose of matter will Board look to other ICI practice with the Board Area - Board directing that disputed work be assigned to Carpenters' union

DELSAN DEMOLITION LIMITED, CJA, LOCAL 494 AND; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL AND THE LIUNA, LOCAL 625 ..... (Oct.) 963

Practice and Procedure - Construction Industry - Evidence - Jurisdictional Dispute - Reconsideration - Timeliness - Board making final order in jurisdictional dispute complaint following consultation with parties - Labourer's union requesting reconsideration and arguing that Board improperly refused to hear certain evidence, that there was no evidence to support certain findings, and that Board misinterpreted material before it - Board explaining its approach to requests for reconsideration given need for finality in its adjudication - Board also explaining new "consultation" procedure for resolving jurisdictional dispute complaints - Board finding no reason to reconsider its disposition of the complaint - EPSCA's separate reconsideration request dismissed as untimely under Rule 85 and on its merits

ONTARIO HYDRO, EPSCA, LIUNA, LOCAL 1059; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE, SMW, LOCAL 473 ..... (May) 442

Practice and Procedure - Construction Industry - Interim Relief - Related Employer - Remedies - Sale of a Business - Union applying for interim orders directing pre-hearing production of relevant lists and documents - Orders issuing but Board noting that production orders may be made on written and properly particularized requests, including representations, without recourse to section 92.1 of the *Act*

HIGHLAND YORK FLOORING COMPANY LIMITED AND HIGHLAND YORK INTERIORS INC.; RE CARPENTERS AND ALLIED WORKERS, LOCAL 27, CJA..... (July) 607

Practice and Procedure - Construction Industry - Jurisdictional Dispute - Board rejecting Millwrights' union's assertion that jurisdictional dispute ought to be withdrawn or dismissed on basis that there was no longer a "demand" for work in dispute as a result of a settlement between employer and Ironworkers' union - Board dealing with entire chain of disputed work associated with material handling conveyor systems, including tagging, dismantling or disconnecting, the transporting of the dismantled systems, and their installation or reconnection at the new site - Board satisfied that correct assignment was to composite crew consisting of equal numbers of Ironworkers and Millwrights - Order to be binding upon all

other jobs undertaken in the future in Board Area #1 - Board declining Ironworkers' request that orders be binding with respect to Board Areas #2 and #3

COMSTOCK CANADA, A DIVISION OF LUNDRIGANS-COMSTOCK LIMITED, MILLWRIGHTS' DISTRICT COUNCIL OF ONTARIO, MILLWRIGHTS, LOCAL 1244, CJA, MILLWRIGHTS, LOCAL 1592, CJA; RE IRONWORKERS' DISTRICT COUNCIL OF ONTARIO AND BSOIW, LOCAL 700.....(Aug.)

740

Practice and Procedure - Construction Industry - Related Employer - Sale of a Business - Responding parties failing to reply to union's applications - Union asking Board to determine application without an oral hearing on the basis of material filed by the union and to deem facts pleaded in the application as having been accepted - Board granting union's request - Related employer declaration issuing

G.B. METALS LIMITED, APRICH ENTERPRISES LTD., ARNOLD GLEN BURSEY; RE IRON WORKERS DISTRICT COUNCIL OF ONTARIO AND THE BSOIW, LOCAL 721 ..... (June)

503

Practice and Procedure - Discharge - Discharge for Union Activity - Evidence - Interim Relief - Remedies - Unfair Labour Practice - Board commenting on importance of filing accurate declarations confirmed by persons with first-hand knowledge - Board unwilling to rely on hearsay material - Union alleging that employee discharged for union activity and seeking interim reinstatement with compensation - Employer denying anti-union *animus* and claiming that discharge motivated by employee having lied to management about theft committed by another employee - Board rejecting argument that interim relief power should be used only in rare and exceptional circumstances - Board concluding that complaint and declarations reflecting arguable case on the merits - Board noting chilling effect of discharge on organizing campaign and that union organizing drive a relatively fragile enterprise in which momentum is often critical - Board recognizing potential harm to employer in temporary negative effect on managerial authority and on its policy regarding theft - On balance, harm from granting order held to be less than harm which might flow from not granting it - Board directing interim reinstatement, but declining to award interim compensation

LOEB HIGHLAND, 810048 ONTARIO LIMITED C.O.B. AS; RE UFCW, LOCAL 175/633.....(Mar.)

197

Practice and Procedure - Discharge - Discharge for Union Activity - Evidence - Interim Relief - Remedies - Unfair Labour Practice - Board commenting on importance of filing accurate declarations confirmed by persons with first-hand knowledge - Board unwilling to rely on hearsay material - Union alleging that employee discharged for union activity and seeking interim reinstatement with compensation - Employer denying anti-union *animus* and claiming that discharge motivated by employee having lied to management about theft committed by another employee - Board rejecting argument that interim relief power should be used only in rare and exceptional circumstances - Board concluding that complaint and declarations reflecting arguable case on the merits - Board noting chilling effect of discharge on organizing campaign and that union organizing drive a relatively fragile enterprise in which momentum is often critical - Board recognizing potential harm to employer in temporary negative effect on managerial authority and on its policy regarding theft - On balance, harm from granting order held to be less than harm which might flow from not granting it - Board directing interim reinstatement, but declining to award interim compensation

LOEB HIGHLAND, 810048 ONTARIO LIMITED C.O.B. AS; RE UFCW, LOCAL 175/633.....(Apr.)

354

Practice and Procedure - Discharge - Discharge for Union Activity - Evidence - Unfair Labour Practice - Employer claiming that employee discharged for having lied to management about theft committed by another employee - Union objecting to introduction of evidence about "similar incident" involving other employee on ground that it pertained to material

fact which had not been set out in employer's response - Board relying on Rule 20 of Board's Rules of Procedure to uphold objection - Discharge tainted by anti-union *animus* - Board finding that employer violated the Act when it met with employee to discuss his organizing activities and when the employee was discharged - Reinstatement with compensation ordered

LOEB IGA HIGHLAND, 810048 ONTARIO LTD. C.O.B. AS; RE UFCW, LOCAL 175/633.....(Mar.) 208

Practice and Procedure - Discharge - Discharge for Union Activity - Interim Relief - Remedies - Unfair Labour Practice - Whether declarations filed by the parties deficient - Board noting that where the only support for a critical aspect of a party's case is a hearsay portion of a declaration, the Board may attach little or no weight to that portion of the declaration - Whether to reinstate union organizers accused by employer of theft pending final disposition of unfair labour practice complaint - Potential labour relations harm sought to be avoided by union significantly greater than potential harm to employer of temporary reinstatement - Interim reinstatement ordered

EAST SIDE MARIO'S, 988421 ONTARIO INC. C.O.B. AS; U.F.C.W., LOCAL 175/633.....(Aug.) 744

Practice and Procedure - Discharge - Duty of Fair Representation - Evidence - Unfair Labour Practice - Applicant alleging that union's failure to take his discharge grievance to arbitration violating the *Act* - At conclusion of applicant's case, Board entertaining union's motion for non-suit without requiring it to elect whether it wished to call evidence - Board satisfied that applicant had presented no basis, on his own evidence, upon which application could succeed - Application dismissed

KENNETH EDWARD HOMER; RE IBEW AND ITS LOCAL 636; RE ST. CATHARINES HYDRO-ELECTRIC COMMISSION ..... (May) 433

Practice and Procedure - Duty of Fair Representation - Unfair Labour Practice - Board exercising its discretion against inquiring into complaint for various reasons, including its finding that inquiry would be an expensive and largely academic exercise serving no tangible policy or labour relations interest - Application dismissed

WILLIAM A. CURTIS; RE THE COMMUNICATIONS, ENERGY & PAPERWORKERS UNION OF CANADA, THE CANADIAN PAPERWORKERS UNION.....(Dec.) 1260

Practice and Procedure - Duty of Fair Representation - Unfair Labour Practice - Complainant alleging that union's failure to arbitrate her grievance violating duty of fair representation - Board sketching out general framework within which complainant's rights must be determined - Board finding that union acted in good faith and that there was nothing arbitrary or discriminatory in the way union represented complainant - Complaint dismissed

LEILA YATEMAN; RE CUPE, LOCAL 1974 ("THE UNION"); RE KINGSTON GENERAL HOSPITAL ("THE HOSPITAL").....(Aug.) 777

Practice and Procedure - Evidence - Unfair Labour Practice - Board not permitting counsel to pursue line of questioning where application did not particularize any of the facts on which the union was seeking to cross-examine

MORRISON'S MEAT PACKERS LTD.; RE UAW .....(Mar.) 226

Practice and Procedure - Interference in Trade Unions - Interim Relief - Remedies - Unfair Labour Practice - Union alleging that employer interfering with organizing drive by posting and distributing certain letter to employees - Board considering whether complaint making out arguable case and also assessing relative harm of granting or withholding relief - Board aiming to preserve union's right to meaningful remedy, should complaint be upheld, while intruding as little as possible on employer's interests - Employer directed to remove letter

from any area in which it was posted and to refrain from communication with employees involving counselling workers to resign union membership - Board's order effective until disposition or settlement of complaint

REYNOLDS-LEMMERZ INDUSTRIES; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA).....(Mar.)

242

Practice and Procedure - Interference in Trade Unions - Natural Justice - Unfair Labour Practice - Board dismissing motion alleging that manner in which hearing conducted by panel denying natural justice - Board finding that discipline by employer of union executive member for engaging in legitimate and protected union activity violating the *Act* - Employer directed to rescind discipline

THE CORPORATION OF THE CITY OF HAMILTON; CUPE, LOCAL 5.....(Nov.)

1214

Practice and Procedure - Jurisdictional Dispute - Parties disputing assignment of work in connection with removal for scrap of exterior metal siding - Board declaring that work in dispute should be assigned to Sheet Metal Workers' union - Board observing that "kitchen sink" approach to preparation of briefs in jurisdictional dispute complaints not particularly helpful - Board noting that parties in this case could properly have focused on the practice relating specifically to the work in dispute and the application of the employer's policy with respect to the assignment of such work

ONTARIO HYDRO, EPSCA, LIUNA, LOCAL 1059; RE ONTARIO SHEET METAL WORKERS' & ROOFERS' CONFERENCE, SMW, LOCAL 473.....(Mar.)

227

Practice and Procedure - Occupational Health and Safety - Settlement - Employer asking Board not to inquire into complaint on the basis that the matter had been settled - Board finding no good reason to permit the applicant to resile from his agreement and some good reasons not to permit him to do so - Board not inquiring further into complaint

STEEP ROCK RESOURCES INC.; RE CHRIS WALKER; RE TEAMSTERS LOCAL UNION 91.....(July)

680

Practice and Procedure - Reconsideration - Termination - Board exercising its discretion under section 105(2)(i) of the *Act* to refuse to entertain subsequent termination application where employee wishes with respect to representation were tested in earlier termination application - Board declining to impose bar on further termination applications - Termination application dismissed - Reconsideration application dismissed

VENTURE INDUSTRIES CANADA LTD.; RE RANDY A. BURKE; RE CAW-CANADA.....(J ne)

572

Practice and Procedure - Stay - Unfair Labour Practice - Subsequent to union's unfair labour practice complaint being filed, employer obtaining *ex parte* court order under *Companies' Creditors' Arrangement Act* staying proceedings before the Board - Registrar directed to set matter down for hearing to receive parties' submissions on Board's jurisdiction to hear and decide complaint in light of court's order

LANDAWN SHOPPING CENTRES LIMITED; NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA).....(Nov.)

1150

Practice and Procedure - Termination - Timeliness - Board exercising its discretion under section 105(2)(i) to refuse to entertain second termination application made by applicant within

period of a few weeks - Application dismissed - Applicant also barred from filing new termination applications for a period of six months

VENTURE INDUSTRIES CANADA LTD. (THE "COMPANY" OR "THE EMPLOYER"); RE RANDY A. BURKE; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 127 ("THE UNION") ..... (July) 707

Pre-Hearing Vote - Certification - Representation Vote - Board's Returning Officer missing first two of three polling times due to snow storm, but parties agreeing to substitute new time for earlier two and voting proceeding - At completion of balloting, parties signing "consent and waiver form" and "certification of conduct of election form" - Incumbent union seeking new vote on ground that new voting time disenfranchised certain employees - Board declining to order second vote - Certificate issuing

ALEXANDRIA SASH & DOOR CO. LIMITED; RE BREWERY, MALT AND SOFT DRINK WORKERS, LOCAL 304; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91..... (Apr.) 303

Reconsideration - Certification - Collective Agreement - Parties - Timeliness - Labourers' union seeking reconsideration of decision to grant early termination of collective agreement between CLAC and employer on ground that posting of Notice to Employees was inadequate - Labourers' union filing certification application in what would otherwise have been open period of collective agreement - Labourers' union having sufficient interest to justify granting standing in its own right to seek reconsideration of early termination decision - Board finding posting of Notice to Employees inadequate - Institutional interest of Board in providing adequate notice to affected employees outweighing reliance interest of company and CLAC on finality of Board's early termination decision - Reconsideration application allowed - Upon counting of ballots, Labourers' certification application dismissed

LEDCOR INDUSTRIES LIMITED; RE CHRISTIAN LABOUR ASSOCIATION OF CANADA ..... (Aug.) 758

Reconsideration - Construction Industry - Construction Industry Grievance - Damages - Remedies - Board earlier finding violation of collective agreement in employer failure to observe mark-up process but making no damage award where union had not proved that it had members available to do the work - Board analyzing principles underlying "lost opportunity" damages and concluding that proof of loss essential to recovery - Union's reconsideration application dismissed

BECHTEL CANADA INC., EPSCA AND; RE SMW, LOCAL 537..... (July) 581

Reconsideration - Construction Industry - Construction Industry Grievance - Practice and Procedure - Party seeking reconsideration not using Form A-47 - Reconsideration request not made within 30 day period specified in Rule 85 and containing nothing prompting Board to grant permission for late filing - Request failing to include complete representations or any submissions which responding party did not have opportunity to raise at hearing preceding decision - Reconsideration application denied

MOHAWK SERVICES; RE B.S.O.I.W. LOCAL 721..... (Apr.) 355

Reconsideration - Construction Industry - Evidence - Jurisdictional Dispute - Practice and Procedure - Timeliness - Board making final order in jurisdictional dispute complaint following consultation with parties - Labourer's union requesting reconsideration and arguing that Board improperly refused to hear certain evidence, that there was no evidence to support certain findings, and that Board misinterpreted material before it - Board explaining its approach to requests for reconsideration given need for finality in its adjudication - Board also explaining new "consultation" procedure for resolving jurisdictional dispute com-

- plaints - Board finding no reason to reconsider its disposition of the complaint - EPSCA's separate reconsideration request dismissed as untimely under Rule 85 and on its merits
- ONTARIO HYDRO, EPSCA, LIUNA, LOCAL 1059; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE, SMW, LOCAL 473 ..... (May) 442
- Reconsideration - Practice and Procedure - Termination - Board exercising its discretion under section 105(2)(i) of the *Act* to refuse to entertain subsequent termination application where employee wishes with respect to representation were tested in earlier termination application - Board declining to impose bar on further termination applications - Termination application dismissed - Reconsideration application dismissed
- VENTURE INDUSTRIES CANADA LTD.; RE RANDY A. BURKE; RE CAW-CANADA ..... (June) 572
- Reference - Bargaining Rights - Conciliation - Interim Relief - Remedies - Union Successor Status - Various locals of RWDSU rejecting proposed merger with UFCW, disaffiliating from RWDSU, amalgamating with each other to form RWDSU/Canada, and merging with with USWA to form Canadian Service Sector Division of USWA - Board in *A & P* case declaring USWA to have acquired rights, privileges and duties of its predecessors - USWA seeking interim order in connection with further 200 pending union successor rights applications - Board declaring USWA to be interim exclusive bargaining agent for employees in bargaining units affected by pending successor rights applications - Board advising Minister of Labour that he may treat USWA as exclusive bargaining agent in respect of affected bargaining units, and may appoint arbitrators and conciliation officers as requested by USWA notwithstanding assertions made by any other trade union - Board dismissing cross-application for interim relief made by UFCW
- THE BAY - KINGSTON, ET AL; RE RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCALS 414, 422, 440, 448, 461, 483, 488, 1000 AND 1688 ..... (Dec.) 1350
- Reference - Bargaining Rights - Construction Industry - Whether to amend designation orders of Painters' union and/or Labourers' union and/or Insulators' union by adding words "and employees engaged in the removal of asbestos" - Board not persuaded that any or all of the designations should be amended
- METROPOLITAN TORONTO DEMOLITION CONTRACTORS ASSOCIATION (THE "CONTRACTORS' ASSOCIATION"), LIUNA (THE "LABOURERS") AND HFIA (THE "INSULATORS"); RE PAT (THE "PAINTERS") ..... (July) 612
- Reference - Collective Agreement - Settlement - Minister of Labour referring question to Board as to existence of collective agreement between the parties - Union acknowledging signed memorandum of settlement as well as ratification by members, but asserting that in absence of written notification to employer of ratification, settlement not elevated to status of collective agreement - Written notice of ratification not required - Board advising Minister that collective agreement in effect between the parties
- DDM PLASTICS INC.; RE IAM, LOCAL LODGE 2792 ..... (Dec.) 1265
- Reference - Conciliation - Constitutional Law - Related Employer - Sale of a Business - Whether labour relations of bus service company offered through local branches at Ajax and Kitchener falling within provincial jurisdiction - Bus service company engaging in "regular and continuous" cross-border charter activity among its various activities - Board finding that bus services offered across the province through local branches constituting core undertaking - Each branch not constituting separate undertaking within constitutional sense - Board advising minister that parties' labour relations falling within federal jurisdiction
- CHARTERWAYS TRANSPORTATION LIMITED (AT KITCHENER, ONTARIO); RE LONDON AND DISTRICT SERVICE WORKERS' UNION, LOCAL 220 ..... (Nov.) 1125

Reference - Constitutional Law - Municipal bus operation primarily intraprovincial, but extra-provincial bus transportation services making up continuous and regular part of the operations - Board advising Minister that bus operation's labour relations falling within federal jurisdiction

TRANSIT WINDSOR; RE AMALGAMATED TRANSIT UNION, LOCAL 616... (July)

698

Related Employer - Bargaining Rights - Union applying for declaration that staging services company (company A) and company owning Dome stadium (company B) are related employers - Union seeking to bind B to union's collective agreement with A with view to having certain stage hand work sometimes undertaken by B's employees done by unionized employees - Board describing relationship between A and B as that of owner/sub-contractor, not a joint venture - Board concluding that commercial and labour relations situation not revealing "mischief" which section 1(4) of the *Act* was designed to cure - Union not seeking to protect bargaining rights with A, but rather to expand those rights to customer of A - Application dismissed

AINSWORTH ELECTRIC CO. LIMITED AND STADIUM CORPORATION OF ONTARIO LIMITED; RE IATSE, LOCAL 58 ..... (Sept.)

817

Related Employer - Bargaining Unit - Certification - Separate but related plastics manufacturers operating plants in Pickering and in Whitby - Union applying for certification and proposing bargaining unit made up of all employees of first corporate respondent in Whitby - Employer submitting that related manufacturers should be treated as one employer, and that appropriate bargaining unit should include all employees in Regional Municipality of Durham - Board making related employer declaration - Board satisfied that fragmenting employer's highly integrated operation would likely cause serious labour relations problems - Regional Municipality unit found to be appropriate - Application dismissed

HORNSCO PLASTICS INC. AND HORN PLASTICS LTD.; RE ACTWU ..... (May)

411

Related Employer - Conciliation - Constitutional Law - Reference - Sale of a Business - Whether labour relations of bus service company offered through local branches at Ajax and Kitchener falling within provincial jurisdiction - Bus service company engaging in "regular and continuous" cross-border charter activity among its various activities - Board finding that bus services offered across the province through local branches constituting core undertaking - Each branch not constituting separate undertaking within constitutional sense - Board advising minister that parties' labour relations falling within federal jurisdiction

CHARTERWAYS TRANSPORTATION LIMITED (AT KITCHENER, ONTARIO); RE LONDON AND DISTRICT SERVICE WORKERS' UNION, LOCAL 220.....(Nov.)

1125

Related Employer - Construction Industry - Construction Industry Grievance - Practice and Procedure - Remedies - Responding parties not filing response to application, nor appearing at hearing - Board issuing declaration on the basis of material filed by the union indicating related activities under common control - Board's Rule 19 also permitting Board to deem responding parties to have accepted all facts in the application when responding parties do not file responses as required by the Rules - Related employer liable to pay outstanding amounts under settlement and Board order in previous grievance referral - Board allowing grievance alleging failure to make remittances and awarding damages against both responding parties

LAKERIDGE ACOUSTICS, MALVERN DRYWALL SYSTEMS LTD. AND 950337 ONTARIO INC. C.O.B. AS; RE ONTARIO COUNCIL OF THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 1891..... (Feb.)

137

Related Employer - Construction Industry - Construction Industry Grievance - Remedies - Carpenters' union having collective agreement with franchisor - Franchisees entering into

agreements with non-union contractors to perform certain renovation work - Board finding that franchisees and franchisor carrying on related activities under common control and direction - Board making single employer declaration, but limiting its application to renovations, including new store construction, agreed to between the responding parties

THE SECOND CUP LTD., AND 953455 ONTARIO LIMITED; RE CJA LOCAL 785..... (Oct.)

1060

Related Employer - Construction Industry - Interim Relief - Practice and Procedure - Remedies - Sale of a Business - Union applying for interim orders directing pre-hearing production of relevant lists and documents - Orders issuing but Board noting that production orders may be made on written and properly particularized requests, including representations, without recourse to section 92.1 of the Act

HIGHLAND YORK FLOORING COMPANY LIMITED AND HIGHLAND YORK INTERIORS INC.; RE CARPENTERS AND ALLIED WORKERS, LOCAL 27, CJA..... (July)

607

Related Employer - Construction Industry - Practice and Procedure - Sale of a Business - Responding parties failing to reply to union's applications - Union asking Board to determine application without an oral hearing on the basis of material filed by the union and to deem facts pleaded in the application as having been accepted - Board granting union's request - Related employer declaration issuing

G.B. METALS LIMITED, APRICH ENTERPRISES LTD., ARNOLD GLEN BURSEY; RE IRON WORKERS DISTRICT COUNCIL OF ONTARIO AND THE BSOIW, LOCAL 721 ..... (June)

503

Related Employer - Construction Industry - Sale of a Business - Board rejecting union's submission that certain individual constituting "key person" and that brief tenure of other individual, found to be "key person", constituting contribution of the business or part of the business of predecessor to alleged successor employer - Successor rights application dismissed - Board not satisfied that responding companies operating under common control or direction - Related employer application dismissed

INPLANT CONTRACTORS INC. AND 911846 ONTARIO LIMITED C.O.B. AS FLINT INDUSTRIAL SERVICES AND FLINT RIGGERS AND ERECTORS INC.; RE MILLWRIGHT DISTRICT COUNCIL OF ONTARIO ON ITS OWN BEHALF AND ON BEHALF OF LOCAL 1244..... (May)

421

Related Employer - Construction Industry - Sale of a Business - Responding employers operating demolition businesses owned by father and son - Board finding no sale of equipment or other commercial transactions between responding employers, but determining that goodwill in effect transferred from father's business to son's business - Board finding sale of a business - Employers also engaged in same business under joint direction or control - Related employer declaration issuing

KEPIC WRECKING INC. AND 963590 ONTARIO INC. C.O.B. AS KEPIC WRECKING; RE LIUNA, LOCAL 837..... (June)

516

Related Employer - Construction Industry - Voluntary Recognition - Board rejecting submission that making related employer declaration would extend, rather than preserve bargaining rights and that voluntary recognition agreement in this case was for a fixed term which ended in April 1992 - Employer cannot enter into collective bargaining relationship on trial or purely time-limited basis - Rule of *contra proferentem* not applying in this case - Board

satisfied that no untoward delay by applicants in bringing application and that responding parties not prejudiced by delay -Application granted

WOODSTOCK ROOFING AND SHEET METAL, GREAT NORTH INDUSTRIES INC. AND GNI CONSTRUCTION LTD., #515422 ONTARIO LIMITED, C.O.B. AS; RE ONTARIO SHEET METAL WORKERS' & ROOFERS' CONFERENCE AND SMW, LOCAL 539..... (May) 459

Remedies - Discharge - Discharge for Union Activity - Interim Relief - Unfair Labour Practice - Board directing employer to reinstate employees on an interim basis pending disposition of their unfair labour practice discharge complaint - Employer also directed to post Board notice in workplace and to provide copies of notice to employees affected by union's certification application

TATE ANDALE CANADA INC.; RE USWA.....(Mar.) 254

Remedies - Adjournment - Construction Industry - Damages - Discharge - Practice and Procedure - Parties - Unfair Labour Practice - Board denying adjournment where request coming in the form of fax to Board on eve of hearing accompanied by unsatisfactory, two-month old medical certificate - Board satisfied that lay-offs motivated, at least in part, by anti-union *animus* - Owner found personally liable for breaches of the *Act* in addition to breaches of the *Act* committed by corporate respondent - Corporate and individual respondents jointly and severally liable for damages assessed at over \$24,000 payable to union on its own behalf and on behalf of members who grieved

CLASSIC MASONRY INC. AND LOUIS TRINDADE; RE B.A.C., LOCAL 5 ...(Aug.) 721

Remedies - Adjustment Plan - Discharge - Interference in Trade Unions - Interim Relief - Unfair Labour Practice - Bargaining unit chairperson discharged some months before scheduled closure of part of employer's plant - Chairperson's discharge grievance being arbitrated, but arbitration proceeding likely to continue beyond closure date - Employer refusing to discuss adjustment plan with union so long as chairperson included on union's bargaining committee - Union seeking order preventing employer from refusing to allow chairperson to participate as member of union committee negotiating adjustment plan - Employer identifying no significant harm resulting from granting order sought - Board directing employer to cease and desist from refusing to recognize and deal with chairperson as member of union committee, and also to meet with union committee in order that parties may bargain in good faith to make adjustment plan

CROWN FAB DIVISION, THE ALLEN GROUP CANADA, LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 1256 ... (Oct.) 960

Remedies - Bargaining Rights - Conciliation - Interim Relief - Reference - Union Successor Status - Various locals of RWDSU rejecting proposed merger with UFCW, disaffiliating from RWDSU, amalgamating with each other to form RWDSU/Canada, and merging with with USWA to form Canadian Service Sector Division of USWA - Board in *A & P* case declaring USWA to have acquired rights, privileges and duties of its predecessors - USWA seeking interim order in connection with further 200 pending union successor rights applications - Board declaring USWA to be interim exclusive bargaining agent for employees in bargaining units affected by pending successor rights applications - Board advising Minister of Labour that he may treat USWA as exclusive bargaining agent in respect of affected bargaining units, and may appoint arbitrators and conciliation officers as requested by USWA notwithstanding assertions made by any other trade union - Board dismissing cross-application for interim relief made by UFCW

THE BAY - KINGSTON, ET AL; RE RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCALS 414, 422, 440, 448, 461, 483, 488, 1000 AND 1688.....(Dec.) 1350

Remedies - Bargaining Rights - Construction Industry - Interim Relief - Practice and Procedure - Unfair Labour Practice - Bricklayers' union Local 2 alleging that Builders Association, Labourers' union and others committing unfair labour practice by, *inter alia*, agreeing to sub-contracting clause in collective agreement between them requiring bricklaying work to be performed by companies bound to agreement with Labourers' union or Bricklayers' union Local 1 - Local 2 requesting that operation of sub-contracting clause be stayed pending resolution of unfair labour practice complaint - Board commenting on lack of particularity and absence of supporting facts establishing first-hand knowledge in declaration filed by Local 2 - Board also noting that interim relief applications may be decided without oral hearings and that parties who fail to provide complete written representations, as required by Rule 86, do so at their peril - Only very discrete core of Local 2's complaint supporting arguable case - Board considering delay in starting proceedings - No obvious reason why harm to Local 2 of denying application outweighing harm to responding parties of staying sub-contracting provision - Application for interim order dismissed

METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION AND LIUNA, LOCAL 183; RE BAC, LOCAL 2; RE METROPOLITAN INDUSTRIAL & COMMERCIAL MASONRY CONTRACTORS INC.; RE MASONRY CONTRACTORS ASSOCIATION OF TORONTO INC.....(Mar.)

219

Remedies - Bargaining Rights - Interim Relief - Union Successor Status - Alleged predecessor union resisting alleged successor union's application under section 63 of the *Act* claiming that it has bargaining rights for several thousand employees of grocery chain - Board directing that employees at each store to continue to be represented in their dealings with their employer by the individual union representatives who customarily dealt with employment problems prior to July 1993, pending the Board's determination concerning which union has bargaining rights- Board directing that copies of its decision be provided to all store managers and that copies be posted in each store

NEW DOMINION STORES, A DIVISION OF THE GREAT ATLANTIC AND PACIFIC COMPANY OF CANADA, LIMITED; RE RWDSU, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCAL 414, 422, 440, 461, 1000 AND THE RWDSU, CANADIAN SERVICE SECTOR DIVISION OF THE USWA; RE RWDSU, AFL-CIO-CLC AND ITS LOCAL AFFILIATE RWDSU, AFL-CIO-CLC, LOCAL 414, 429, 545, 579, 582 AND 915.....(Aug.)

783

Remedies - Bargaining Rights - Sale of a Business - Unfair Labour Practice - Board, in earlier decision, declaring that sale of a business occurred but that bargaining rights terminated and that collective agreement no longer binding - Parties disputing effective date of declaration - Board considering it appropriate to make declaration effective as of date of "sale", as if transaction never occurred, and so directing - Board also ruling on parameters of available relief in connection with earlier finding that employer had violated section 67 of the *Act* - Alternate Chair appointed to meet with parties and assist them in resolving outstanding issues

KITCHENER WATERLOO HOSPITAL; RE ONA; RE GROUP OF EMPLOYEES.....(Mar.)

187

Remedies - Bargaining Unit - Combination of Bargaining Units - Union applying to combine hydro facility's office bargaining unit and outside bargaining unit - Board reviewing relevant principles in connection with combination applications - Board also comparing its approach to combining bargaining units to method used by the Board to structure those units at the point of certification - Board concluding that combining units in this case would, to some extent, facilitate viable and stable bargaining and reduce fragmentation without causing serious labour relations problems - Board directing that the two units be combined and remaining seized to deal with any further remedial relief

MISSISSAUGA HYDRO-ELECTRIC COMMISSION; RE IBEW, LOCAL 636 ... (June)

523

Remedies - Bargaining Unit - Combination of Bargaining Units - Union representing full-time employees since 1987 - Union recently certified to represent part-time employees and applying to combine bargaining units - Board satisfied that combining units would facilitate viable and stable collective bargaining and reduce fragmentation without causing serious labour relations problems - Board directing that the bargaining units be combined and remaining seized of any issues arising out of implementation of its order

KINGSTON ACCESS BUS; RE CBRT & GW ..... (July) 610

Remedies - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Intimidation and Coercion - Unfair Labour Practice - Board finding that employer embarked on scheme of harassment and intimidation of union organizers and supporters and accepting that termination of certain employees motivated by involvement in union organizing campaign - Board satisfied that, as result of employer violations of the *Act*, true wishes of employees unlikely to be ascertained - Board regarding it as unnecessary to consider whether or not union having adequate membership support for collective bargaining, in view of clear direction to the Board in legislature's amendment of section 9.2 of the *Act* - Certificate issuing

CARLETON UNIVERSITY STUDENTS' ASSOCIATION INC.; RE CUPE ..... (Oct.) 938

Remedies - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Unfair Labour Practice - Board finding that employer violated *Act* by discharging certain employees and by seeking return of materials provided to employees by the union - Board directing that employees be reinstated with compensation and certifying union under section 9.2 of the *Act* - Board directing that union be permitted to convene meeting of employees on company premises during working hours and directing employer to provide union with list of employees' names, addresses and telephone numbers

ROYAL SHIRT COMPANY LIMITED; RE ACTWU ..... (Nov.) 1177

Remedies - Change in Working Conditions - Damages - *Hospital Labour Disputes Arbitration Act* - Unfair Labour Practice - Board determining and declaring that certain scheduling changes affecting job sharing arrangements violating statutory "freeze" - Board declining to direct employer to restore previous work schedules in view of collective agreement made by parties subsequent to filing complaint, but directing that affected employees be compensated according to formula set out in decision

OAKVILLE LIFECARE CENTRE; RE ONA ..... (Oct.) 980

Remedies - Change in Working Conditions - Interim Relief - Unfair Labour Practice - Union alleging that school board employers' planned measures regarding taking of vacations breaching statutory freeze - Unions asking Board to make interim order directing employers to permit employees to choose when they will take vacation during July and August - Union not relying on any potential harm beyond difficulty in remedy to individual employees - Union not asserting any effect on wider labour relations context between parties - In absence of broader labour relations considerations, balance of harm not weighing in favour of making interim order - Applications dismissed

LA SECTION CATHOLIQUE DU CONSEIL SCOLAIRE DE LANGUE FRANÇAISE D'OTTAWA-CARLETON; RE ASSOCIATION DES EMPLOYÉS D'OTTAWA-CARLETON (EMPLOYÉS DE BUREAU, DE SECRÉTARIAT ET EMPLOYÉS TECHNIQUES) ..... (Sept.) 844

Remedies - Combination of Bargaining Units - Interim Relief - Union seeking interim order prohibiting otherwise lawful strikes or lock-outs pending disposition of application to combine

bargaining units - Board not finding reasons advanced for order sought sufficient to justify its imposition

THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF OTTAWA; RE IBEW, LOCAL 636 ..... (Nov.)

1231

Remedies - Construction Industry - Change in Working Conditions - Duty to Bargain in Good Faith - Unfair Labour Practice - Employer violating "statutory freeze" in failing to contact union office when it needed new employees and in failing to pay wages and benefits required by collective agreement - Employer directed to compensate union on behalf of its members - Employer operating entirely outside terms of agreement during period of bargaining - Employer failing to make every reasonable effort to make a collective agreement - In circumstances of this case, however, Board preferring to allow bargaining process to continue rather than to impose settlement on the parties under section 91(4)(d) of the *Act* - Parties directed to meet and bargain in good faith

GENERAL WOOD PRODUCTS; RE CJA, LOCAL 1072 ..... (July)

597

Remedies - Construction Industry - Construction Industry Grievance - Damages - Judicial Review - Employer grieving against union and employee alleging improper claim and receipt of room and board allowance by employee - Employer claiming damages - Nothing in collective agreement giving Board the power to award damages against employee - Board dismissing employer's request for damages, but holding that declaratory relief available - Declaration issuing - Employer seeking judicial review - Divisional Court ruling that Board declined its jurisdiction to consider award of damages against the employee and remitting matter to the Board for its determination

ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION, THE; RE ONTARIO ALLIED CONSTRUCTION TRADES COUNCIL, HFIA, LOCAL 95, JAMES CORD, AND THE OLRB ..... (Mar.)

276

Remedies - Construction Industry - Construction Industry Grievance - Damages - Board earlier finding employer in violation of collective agreement and awarding damages - Board rejecting argument that employer ought to be relieved of its obligations to compensate for damages arising out of its violation of the collective agreement because it elected to use fewer employees on the job than it was required to pursuant to the terms of the collective agreement - Board rejecting argument that damages ought not to be paid to the union but, rather, directly to members who would have been employed or, alternatively, to union in trust on behalf of those *specific* members - Employer directed to pay quantified damages to union in trust on behalf of its members

E.S. FOX LIMITED; RE IUOE AND ITS LOCAL 793 ..... (Oct.)

970

Remedies - Construction Industry - Construction Industry Grievance - Damages - Employer found in violation of collective agreement in failing to observe mark-up process in assigning disputed work - Union claiming loss of opportunity damages, but not proving that it had members available to do the work - Board declaring violation of agreement but making no damages award

BECHTEL CANADA INC., EPSCA AND; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE AND SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 537 ..... (May)

400

Remedies - Construction Industry - Construction Industry Grievance - Damages - Jurisdictional Dispute - Board earlier deciding jurisdictional dispute in favour of Sheet Metal Workers' union - Union seeking compensatory damages through grievance and arbitration under section 126 of the *Act* - Board determining that collective agreement precluding it from awarding damages in this case involving first time error in assigning work where mark-up meeting

had been held - Work not falling within “same employer and same work” exception in collective agreement - Board finding that no damages owed

THE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION, BRUCE NUCLEAR POWER DEVELOPMENT; RE SMW, LOCAL 473..... (Dec.) 1392

Remedies - Construction Industry - Construction Industry Grievance - Damages - Reconsideration - Board earlier finding violation of collective agreement in employer failure to observe mark-up process but making no damage award where union had not proved that it had members available to do the work - Board analyzing principles underlying “lost opportunity” damages and concluding that proof of loss essential to recovery - Union’s reconsideration application dismissed

BECHTEL CANADA INC., EPSCA AND; RE SMW, LOCAL 537..... (July) 581

Remedies - Construction Industry - Construction Industry Grievance - Practice and Procedure - Related Employer - Responding parties not filing response to application, nor appearing at hearing - Board issuing declaration on the basis of material filed by the union indicating related activities under common control - Board’s Rule 19 also permitting Board to deem responding parties to have accepted all facts in the application when responding parties do not file responses as required by the Rules - Related employer liable to pay outstanding amounts under settlement and Board order in previous grievance referral - Board allowing grievance alleging failure to make remittances and awarding damages against both responding parties

LAKERIDGE ACOUSTICS, MALVERN DRYWALL SYSTEMS LTD. AND 950337 ONTARIO INC. C.O.B. AS; RE ONTARIO COUNCIL OF THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 1891..... (Feb.) 137

Remedies - Construction Industry - Construction Industry Grievance - Related Employer - Carpenters’ union having collective agreement with franchisor - Franchisees entering into agreements with non-union contractors to perform certain renovation work - Board finding that franchisees and franchisor carrying on related activities under common control and direction - Board making single employer declaration, but limiting its application to renovations, including new store construction, agreed to between the responding parties

THE SECOND CUP LTD., AND 953455 ONTARIO LIMITED; RE CJA LOCAL 785 ..... (Oct.) 1060

Remedies - Construction Industry - Construction Industry Grievance - Sheet Metal union and Plumbers’ union alleging employer failure to comply with “working agreement” binding employer to collective agreements in “residential sector” - Employer claiming that Sheet Metal collective agreement restricted to specialty contractors and that subcontracting clause in Sheet Metal and in Plumbers’ collective agreements not applying to it as a general contractor - Employer also asserting that unions would not have been able to get work on construction site identified in grievance because of bid depository arrangement and that damages should be denied - Board finding collective agreements not restricted to “specialty contractors”, that working agreement binding employer to the collective agreements, and that subcontracting clauses effective against employer - Board finding employer in violation of collective agreements

WEST YORK CONSTRUCTION 1984 LTD.; RE SMW, LOCAL 285 ..... (May) 456

Remedies - Construction Industry - Duty of Fair Referral - Unfair Labour Practice - Board previously upholding complaint and reconvening on issue of damages - Board concluding that duty of fair referral complainant owing duty to union to mitigate losses, but not obliged to

accept referrals as apprentice to fulfill duty - Board also deciding that damages should be reduced because of complainant's unreasonable delay in filing complaint

JAMES N. KRALL; RE C.J.A., LOCAL 785.....(Jan.)

39

Remedies - Construction Industry - Interim Relief - Practice and Procedure - Related Employer - Sale of a Business - Union applying for interim orders directing pre-hearing production of relevant lists and documents - Orders issuing but Board noting that production orders may be made on written and properly particularized requests, including representations, without recourse to section 92.1 of the Act

HIGHLAND YORK FLOORING COMPANY LIMITED AND HIGHLAND YORK INTERIORS INC.; RE CARPENTERS AND ALLIED WORKERS, LOCAL 27, CJA.....(July)

607

Remedies - Damages - Discharge - Duty of Fair Representation - Unfair Labour Practice - Board earlier finding union in violation of duty of fair representation, but parties failing to agree on appropriate remedy - Reinstatement with compensation for nine months lost wages ordered - In assessing damages, Board not taking into account two-month delay in complaining to Board, but making deduction for failure to adequately mitigate and for complainant's admitted misconduct prior to discharge

TIM TURNER; RE THE RETAIL, WHOLESALE BAKERY AND CONFECTION-ERY WORKERS UNION, LOCAL 461 OF THE R.W.D.S.U. AFL:CIO:CLC AND RICK KENT, ALF DAVIS, GARY SAGE, AB PLAYER; RE WESTON BAKERIES.....(Aug.)

811

Remedies - Damages - Duty to Bargain in Good Faith - Final Offer Vote - Interference in Trade Unions - Judicial Review - Lockout - Natural Justice - Unfair Labour Practice - Employer engaging in illegal lockout by transferring bargaining unit work to another company immediately before strike/lockout deadline - Work transfer motivated at least in part by desire to avoid union - Employer breaching duty to bargain in good faith by sending uninformed representatives to bargaining table, by failing to disclose contemplated transfer of work, and by bargaining directly with employees hired to work at other company - Direct bargaining constituting interference in trade union - Employer demand for employee consent to release of addresses for final offer vote constituting interference in trade union - Board ordering employer to cease and desist from violations of Act - Board ordering resumption of bargaining meetings - Board ordering employer to compensate all bargaining unit employees for monetary losses arising out of breaches - Board ordering employer to pay union's negotiating costs - Board ordering employer to return work to original company and make no further movement without disclosure to union - Board ordering employer to provide union with names and addresses of bargaining unit employees as of lockout date and to advise of additions or changes - Board ordering workplace Notice of Posting signed personally by employer - Board ordering copy of decision to be mailed to all bargaining unit employees - Employer applying for judicial review and submitting that Board exceeded its jurisdiction and breached rules of natural justice - Judicial review application dismissed by Divisional Court

PLAZA FIBREGLAS MANUFACTURING LIMITED, PLAZA ELECTRO-PLATING LTD., CITCOR MANUFACTURING LTD. AND SABINA CITRON; RE: ONTARIO LABOUR RELATIONS BOARD AND UNITED STEELWORKERS OF AMERICA.....(Jan.)

83

Remedies - Discharge - Discharge for Union Activity - Evidence - Interim Relief - Practice and Procedure - Unfair Labour Practice - Board commenting on importance of filing accurate declarations confirmed by persons with first-hand knowledge - Board unwilling to rely on hearsay material - Union alleging that employee discharged for union activity and seeking interim reinstatement with compensation - Employer denying anti-union *animus* and claim-

ing that discharge motivated by employee having lied to management about theft committed by another employee - Board rejecting argument that interim relief power should be used only in rare and exceptional circumstances - Board concluding that complaint and declarations reflecting arguable case on the merits - Board noting chilling effect of discharge on organizing campaign and that union organizing drive a relatively fragile enterprise in which momentum is often critical - Board recognizing potential harm to employer in temporary negative effect on managerial authority and on its policy regarding theft - On balance, harm from granting order held to be less than harm which might flow from not granting it - Board directing interim reinstatement, but declining to award interim compensation

LOEB HIGHLAND, 810048 ONTARIO LIMITED C.O.B. AS; RE UFCW, LOCAL 175/633.....(Mar.)

197

Remedies - Discharge - Discharge for Union Activity - Evidence - Interim Relief - Practice and Procedure - Unfair Labour Practice - Board commenting on importance of filing accurate declarations confirmed by persons with first-hand knowledge - Board unwilling to rely on hearsay material - Union alleging that employee discharged for union activity and seeking interim reinstatement with compensation - Employer denying anti-union *animus* and claiming that discharge motivated by employee having lied to management about theft committed by another employee - Board rejecting argument that interim relief power should be used only in rare and exceptional circumstances - Board concluding that complaint and declarations reflecting arguable case on the merits - Board noting chilling effect of discharge on organizing campaign and that union organizing drive a relatively fragile enterprise in which momentum is often critical - Board recognizing potential harm to employer in temporary negative effect on managerial authority and on its policy regarding theft - On balance, harm from granting order held to be less than harm which might flow from not granting it - Board directing interim reinstatement, but declining to award interim compensation

LOEB HIGHLAND, 810048 ONTARIO LIMITED C.O.B. AS; RE UFCW, LOCAL 175/633.....(Apr.)

354

Remedies - Discharge - Discharge for Union Activity - Interference in Trade Unions - Intimidation and Coercion - Unfair Labour Practice - Board finding lay-offs partly or wholly motivated by anti-union sentiment and that Act violated when employer threatened to close plant if union came in - Complaint allowed - Reinstatement with compensation ordered - Employer also directed to mail Board notices to bargaining unit members at their homes

BARTON FEEDERS INC.; RE U.F.C.W., LOCAL 633.....(Feb.)

89

Remedies - Discharge - Discharge for Union Activity - Interim Relief - Practice and Procedure - Unfair Labour Practice - Whether declarations filed by the parties deficient - Board noting that where the only support for a critical aspect of a party's case is a hearsay portion of a declaration, the Board may attach little or no weight to that portion of the declaration - Whether to reinstate union organizers accused by employer of theft pending final disposition of unfair labour practice complaint - Potential labour relations harm sought to be avoided by union significantly greater than potential harm to employer of temporary reinstatement - Interim reinstatement ordered

EAST SIDE MARIO'S, 988421 ONTARIO INC. C.O.B. AS; U.F.C.W., LOCAL 175/633.....(Aug.)

744

Remedies - Discharge - Discharge for Union Activity - Interim Relief - Unfair Labour Practice - Board directing employer to reinstate employees on interim basis pending disposition of unfair labour practice discharge complaint - Employer also directed to provide copy of Board notice to all employees affected by union's certification application

CMP GROUP (1985) LTD.; RE LAUNDRY & LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847.....(Sept.)

824

- Remedies - Discharge - Discharge for Union Activity - Interim Relief - Unfair Labour Practice - Board directing reinstatement of discharged employees on interim basis pending final disposition of unfair labour practice complaint - Employer also directed to post Board notice in prominent places in workplace
- EAST SIDE MARIO'S, 988421 ONTARIO INC. C.O.B. AS; RE UFCW, LOCAL 175/633..... (July) 587
- Remedies - Discharge - Discharge for Union Activity - Interim Relief - Unfair Labour Practice - Board noting exceptionally broad language of section 92.1 of the *Act*, as well as its "facilitative" or "forensic" thrust - Board explaining advantages of timely intervention without finding fault - Board assessing potential harm in making or not making interim order from perspective of employer, union, aggrieved employees and other employees who may be affected by impugned conduct and directing interim reinstatement of discharged employees pending disposition of unfair labour practice complaint
- TATE ANDALE CANADA INC.; USWA..... (Oct.) 1019
- Remedies - Discharge - Discharge for Union Activity - Interim Relief - Unfair Labour Practice - Union claiming that various lay-offs and changes in employee duties constituting unfair labour practices - Union seeking interim relief pending disposition of unfair labour practice complaint - Board satisfied that important labour relations interests, including preserving ability of employees to freely participate in union activities, outweighing temporary disruption of company's affairs caused by interim orders - Employer ordered to reinstate certain employees and to restore duties or hours to others on interim basis until unfair labour practice complaint determined
- J.C.V.R. PACKAGING INC.; RE UNITED STEELWORKERS OF AMERICA..(Nov.) 1145
- Remedies - Discharge - Discharge for Union Activity - Interim Relief - Unfair Labour Practice - Union filing complaint in respect of alleged unlawful discharge in August 1992 - Union applying for interim order reinstating discharged employee in February 1993 - In all the circumstances, including the elapsed time between the discharge and the coming into force of section 92.1 and including the applicant's one month delay in filing union's application, Board not satisfied that balance of harm favouring the applicant - Application dismissed
- PRICE CLUB CANADA INC.; RE UFCW, LOCAL 175.....(July) 635
- Remedies - Discharge - Discharge for Union Activity - Interim Relief - Unfair Labour Practice - Union making complaint in October 1992 alleging that employees unlawfully discharged for union activity - Hearing in discharge complaint commencing in December 1992 and continuing on dates in February, April and May 1993 - Union filing application in February 1993 seeking interim reinstatement of employees pending final determination of complaint - Assuming truth of allegations, complaint making out arguable case for remedies sought - Board weighing relative labour relations harm resulting from granting or not granting interim order sought and declining to order interim relief - Delay militating against granting interim relief - Board not persuaded that interim order power ought to be used to limit or avoid harm which is purely financial - Application dismissed
- MORRISON MEAT PACKERS LTD.; RE U.A.W. ....(Apr.) 358
- Remedies - Discharge - Duty of Fair Representation - Trade Union - Trade Union Status - Unfair Labour Practice - Applicant claiming that Association's failure to advance discharge grievance to arbitration violating the *Act* - Board rejecting assertion of Association and employer that Association not a trade union within the meaning of the *Act* - Board finding that Association violating its duty to applicant under section 69 of the *Act* by never turning its mind to merits of applicant's case - Association directed to consider merits of applicant's

case, to conduct any investigation its feels appropriate, and to advise applicant within specified period of what it intends to do and the reasons for its decision

SUSAN FORBES; RE THE SIMCOE COUNTY ROMAN CATHOLIC SEPARATE SCHOOL CUSTODIANS; THE SIMCOE COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD.....(Dec.) 1283

Remedies - Duty of Fair Referral - Duty of Fair Representation - Interim Relief - Unfair Labour Practice - Applicant working as lighting technician in film and television production - Applicant alleging that his union violating *Act* in various ways in denying him work opportunities and requesting interim order directing union to issue permits on request of employers authorizing applicant's hiring pending disposition of unfair labour practice complaint - Board finding that potential harm to applicant of not granting order primarily financial and that balance of harm weighing in favour of union - Application dismissed

BRYAN FORDE; RE NABET, LOCAL 700 .....(Dec.) 1296

Remedies - Duty of Fair Representation - Interim Relief - Unfair Labour Practice - Applicant taxi drivers requesting order from Board preventing union from selling three taxi stand spots until complaint alleging breach of union's duty of fair representation decided - Applicants alleging potential harm to third parties if interim order not made - Board noting that harm to third parties would not in itself generally be sufficient to warrant granting interim order - Application dismissed

SHARIAR NAMVAR AND MALIK AWADA; RE RWDSU, AFL:CIO:CLC AND BLUE LINE TAXI COMPANY LTD. ....(Aug.) 793

Remedies - Interference in Trade Unions - Interim Relief - Practice and Procedure - Unfair Labour Practice - Union alleging that employer interfering with organizing drive by posting and distributing certain letter to employees - Board considering whether complaint making out arguable case and also assessing relative harm of granting or withholding relief - Board aiming to preserve union's right to meaningful remedy, should complaint be upheld, while intruding as little as possible on employer's interests - Employer directed to remove letter from any area in which it was posted and to refrain from communication with employees involving counselling workers to resign union membership - Board's order effective until disposition or settlement of complaint

REYNOLDS-LEMMERZ INDUSTRIES; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) .....(Mar.) 242

Remedies - Interference in Trade Unions - Interim Relief - Unfair Labour Practice - Union Successor Status - USWA filing complaint alleging employer interference in union activity and making request for interim relief - Application for interim relief made in context of continuing dispute between USWA and RWDSU over who represents employees of employer, and in context of earlier interim Board order directing that employees to continue to be represented in dealings with employer by individual union representatives who had customarily dealt with employment problems prior to July 1993 - Board granting further interim orders in connection with leaves of absence for union business and other matters in order to ensure that employer does not actively support either union at expense of the other, pending Board's decision in USWA's successor rights application

NEW DOMINION STORES, A DIVISION OF THE GREAT ATLANTIC AND PACIFIC COMPANY OF CANADA, LIMITED AND RWDSU, AFL-CIO-CLC; RE RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCAL 414 ..... (Sept.) 880

Remedies - Interim Relief - Unfair Labour Practice - Union alleging that, as result of participation by employees in arbitration proceeding, employer altering employees' hours of work in

violation of the *Act* - Union seeking order restoring employees' hours of work pending resolution of unfair labour practice complaint - Union and employer having collective bargaining relationship since 1988 and Board identifying no significant labour relations harm to affected employees or union if order not made - Board refusing to order employer to restore employees' hours of work, but directing it to notify employees of their rights under the *Act* through distribution of Board notice

FORT ERIE DUTY FREE SHOPPE INC.; RE ONTARIO LIQUOR BOARDS  
EMPLOYEES' UNION .....(Dec.)

1307

Representation Vote - Adjournment - Build-Up - Certification - Parties - Sale of a Business - Security Guards - Union making certification application in June 1993 in respect of employees of H - H's contract to provide security services not renewed and W providing those service effective July 1993 - W a successor employer within meaning of section 64.2 of the *Act* - Board permitting W to participate in certification proceeding over union's objection - Board declining to adjourn proceeding to allow union to investigate alleged "freeze" violation by W - Number of positions in bargaining unit increasing from 11 on certification application date to 13 on date of hearing - Board ruling that "build-up" principle not applicable in this case - W and H asking Board to direct representation vote on basis of change in composition of bargaining unit since application date - Employees at work on application date sufficiently representative of work force on hearing date that Board finding it appropriate to determine application based on assessment of wishes of those employees without representation vote - Interim certificate issuing

HAWK SECURITY SYSTEMS LTD.; RE USWA; RE WAKENHUT OF CANADA  
LIMITED.....(Aug.)

751

Representation Vote - Adjournment - Certification - Charter of Rights and Freedoms - Constitutional Law - Evidence - Natural Justice - Practice and Procedure - Board declining to hear objecting employees' Charter argument where notice not given to Attorney-General - Board declining to adjourn hearing so that notice to Attorney-General could be given - Board applying *Hemlo Gold Mines* case and affirming that "application date" in section 8(4) of the *Act* means date on which application is filed and holding that this interpretation involves no denial of natural justice - Board declining to hear employees' *viva voce* evidence in connection with discretion to order representation vote - Board's discretion under section 8(3) of the *Act* should be exercised in way that recognizes that statutory scheme based primarily on documentary evidence of membership - Proffered evidence would not affect Board's of discretion in circumstances of this case

SHAW INDUSTRIES LTD. C.O.B. AS CANUSA (A DIVISION OF SHAW INDUSTRIES LTD.); RE IWA - CANADA; RE GROUP OF EMPLOYEES.....(Aug.)

798

Representation Vote - Certification - Charter of Rights and Freedoms - Constitutional Law - Judicial Review - Natural Justice - Petition - Group of objecting employees filing "petition" in opposition to union after certification application filing date - Objecting employees asking Board to extend application filing date to allow timely filing of petition, and to conduct certification hearing in Thunder Bay - Objecting employees also challenging constitutional validity of section 8(4) of the *Act* and Rule 47 of the Board's Rules of Procedure, and asserting violation of rules of natural justice - Board dismissing various objecting employees' objections in oral ruling - Objecting employees then seeking to have application dismissed on grounds of reasonable apprehension of bias - Board finding no reasonable apprehension of bias and dismissing motion - Company's request that Board exercise its discretion under section 8(3) of the *Act* to direct representation vote denied - Union enjoy-

ing support in excess of 55% in appropriate bargaining unit - Certificate issuing - Divisional Court dismissing objecting employees' judicial review application

HEMLO GOLD MINES INC., USWA AND; RE LAROY MACKENZIE AND WAYNE MACKENZIE ET AL. ALSO KNOWN AS EMPLOYEES OF HEMLO GOLD MINES INC. FOR A DEMOCRATIC CHOICE ..... (May) 471

Representation Vote - Certification - Charter of Rights and Freedoms - Constitutional Law - Natural Justice - Petition - Group of objecting employees filing "petition" in opposition to union after certification application filing date - Objecting employees asking Board to extend application filing date to allow timely filing of petition, and to conduct certification hearing in Thunder Bay - Objecting employees also challenging constitutional validity of section 8(4) of the *Act* and Rule 47 of the Board's Rules of Procedure, and asserting violation of rules of natural justice - Board dismissing various objecting employees' objections in oral ruling - Objecting employees then seeking to have application dismissed on grounds of reasonable apprehension of bias - Board finding no reasonable apprehension of bias and dismissing motion - Company's request that Board exercise its discretion under section 8(3) of the *Act* to direct representation vote denied - Union enjoying support in excess of 55% in appropriate bargaining unit - Certificate issuing

HEMLO GOLD MINES INC.; RE UNITED STEELWORKERS OF AMERICA; RE GROUP OF EMPLOYEES ..... (Mar.) 158

Representation Vote - Certification - Pre-Hearing Vote - Board's Returning Officer missing first two of three polling times due to snow storm, but parties agreeing to substitute new time for earlier two and voting proceeding - At completion of balloting, parties signing "consent and waiver form" and "certification of conduct of election form" - Incumbent union seeking new vote on ground that new voting time disenfranchised certain employees - Board declining to order second vote - Certificate issuing

ALEXANDRIA SASH & DOOR CO. LIMITED; RE BREWERY, MALT AND SOFT DRINK WORKERS, LOCAL 304; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 ..... (Apr.) 303

Representation Vote - Certification - Security Guards - Union applying to be certified for unit of 1100 guards working at 200 sites within 4 separate municipal regions - Board directing representation vote in agreed-upon voting constituency - Union requesting that employer disclose to it addresses of employees on voters' list - Board directing employer to produce labels containing names and addresses of persons on voters' list and to allow union representatives to attend employer's office with sealed envelopes to be labelled and mailed by representatives of union and employer together - Board directing that all reasonable costs associated with mailing to be borne by union

METROPOL SECURITY SERVICES, BARNES SECURITY SERVICES LIMITED C.O.B. AS; RE USWA ..... (Nov.) 1154

Representation Vote - Termination - Whether representation vote should be ordered (and ballot box sealed) pending resolution of issue of timeliness of termination application - Board questioning jurisdiction to order vote in circumstances where timeliness of application undetermined - Board adopting practice in certification procedure (to resolve entitlement issues before directing a vote) and declining to order vote until timeliness issue resolved

SPOONERS' RESTAURANT, EMPLOYEES OF 598142 ONTARIO LIMITED CARRYING ON BUSINESS AS; RE THE R.W.D.S.U., LOCAL 448; RE 598142 ONTARIO LIMITED C.O.B. AS SPOONERS' RESTAURANT ..... (Jan.) 77

Right of Access - Interference in Trade Unions - Unfair Labour Practice - Employer directing employees not to engage in union activity or discussion of union related issues on company premises - Board rejecting employer's argument that section 11.1 of the *Act* altered the law

regarding the right of employees to engage in union activity in the workplace - Prohibition of union activity and discussion of union related issues violating section 65 and 67 and declared to be of no effect

SOBEYS INC.; RE UFCW, LOCAL 1000A.....(July) 675

Right of Access - Picketing - Strike Replacement Workers - Unfair Labour Practice - Board finding that company violated section 73.1 of the *Act* by using prohibited replacement workers to perform work where employees on strike - Board making cease and desist order and directing that its decision be posted on outside of each struck store - Board declining company's request for restrictions on picketing under section 11.1 of the *Act* - Board noting that picketing had generally been peaceful, that section 11.1 contemplating some disruption without giving rise to restrictions, and that company made little attempt to utilize other means of assistance available to it

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED; RE UFCW, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK AND CLIFF SKINNER .....(Nov.) 1230

Sale of a Business - Adjournment - Build-Up - Certification - Parties - Representation Vote - Security Guards - Union making certification application in June 1993 in respect of employees of H - H's contract to provide security services not renewed and W providing those services effective July 1993 - W a successor employer within meaning of section 64.2 of the *Act* - Board permitting W to participate in certification proceeding over union's objection - Board declining to adjourn proceeding to allow union to investigate alleged "freeze" violation by W - Number of positions in bargaining unit increasing from 11 on certification application date to 13 on date of hearing - Board ruling that "build-up" principle not applicable in this case - W and H asking Board to direct representation vote on basis of change in composition of bargaining unit since application date - Employees at work on application date sufficiently representative of work force on hearing date that Board finding it appropriate to determine application based on assessment of wishes of those employees without representation vote - Interim certificate issuing

HAWK SECURITY SYSTEMS LTD.; RE USWA; RE WAKENHUT OF CANADA LIMITED.....(Aug.) 751

Sale of a Business - Bargaining Rights - All events material to application occurring prior to coming into force on January 1, 1993 of amendments to *Labour Relations Act*, including amendments to section 64 - Board hearing held after January 1, 1993 - Board applying section 64, as it existed prior to amendments, to facts of the case - Responding employer owning and operating retail food store previously owned and operated as retail food store by A & P - Store directly sub-let by A & P to responding employer - Even if result could be said to be expansion of responding employer's existing business, result accomplished through acquisition of part of A & P's business - Transaction constituting sale of business within meaning of the *Act* - Declaration issuing

PENNY LANE FOOD MARKETS LTD.; RE UFCWU, LOCAL 175/633; RE GROUP OF EMPLOYEES.....(Mar.) 230

Sale of a Business - Bargaining Rights - Remedies - Unfair Labour Practice - Board, in earlier decision, declaring that sale of a business occurred but that bargaining rights terminated and that collective agreement no longer binding - Parties disputing effective date of declaration - Board considering it appropriate to make declaration effective as of date of "sale", as if transaction never occurred, and so directing - Board also ruling on parameters of available relief in connection with earlier finding that employer had violated section 67 of the

*Act* - Alternate Chair appointed to meet with parties and assist them in resolving outstanding issues

KITCHENER WATERLOO HOSPITAL; RE ONA; RE GROUP OF EMPLOYEES.....(Mar.) 187

Sale of a Business - Certification - Security Guard - Union applying to represent guards employed by condominium corporation at single location - Security company acquiring contract to provide security services at condominium two weeks later - Security firm already having collective agreement with rival union - Parties agreeing that security company should be named as employer in bargaining unit description - Rival union and employer asserting that collective agreement between them barring certification application - Board deferring consideration of certification application pending filing by interested party of sale of business application under section 64 of the *Act*

MEADOWVALE SECURITY GUARD SERVICES INC.; CANADIAN UNION OF PROFESSIONAL SECURITY-GUARDS; RE THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (CLAC) .....(Dec.) 1340

Sale of a Business - Conciliation - Constitutional Law - Reference - Related Employer - Whether labour relations of bus service company offered through local branches at Ajax and Kitchener falling within provincial jurisdiction - Bus service company engaging in "regular and continuous" cross-border charter activity among its various activities - Board finding that bus services offered across the province through local branches constituting core undertaking - Each branch not constituting separate undertaking within constitutional sense - Board advising minister that parties' labour relations falling within federal jurisdiction

CHARTERWAYS TRANSPORTATION LIMITED (AT KITCHENER, ONTARIO); RE LONDON AND DISTRICT SERVICE WORKERS' UNION, LOCAL 220.....(Nov.) 1125

Sale of a Business - Construction Industry - Interim Relief - Practice and Procedure - Related Employer - Remedies - Union applying for interim orders directing pre-hearing production of relevant lists and documents - Orders issuing but Board noting that production orders may be made on written and properly particularized requests, including representations, without recourse to section 92.1 of the *Act*

HIGHLAND YORK FLOORING COMPANY LIMITED AND HIGHLAND YORK INTERIORS INC.; RE CARPENTERS AND ALLIED WORKERS, LOCAL 27, CJA.....(July) 607

Sale of a Business - Construction Industry - Practice and Procedure - Related Employer - Responding parties failing to reply to union's applications - Union asking Board to determine application without an oral hearing on the basis of material filed by the union and to deem facts pleaded in the application as having been accepted - Board granting union's request - Related employer declaration issuing

G.B. METALS LIMITED, APRICH ENTERPRISES LTD., ARNOLD GLEN BURSEY; RE IRON WORKERS DISTRICT COUNCIL OF ONTARIO AND THE BSOIW, LOCAL 721 .....(June) 503

Sale of a Business - Construction Industry - Related Employer - Board rejecting union's submission that certain individual constituting "key person" and that brief tenure of other individual, found to be "key person", constituting contribution of the business or part of the business of predecessor to alleged successor employer - Successor rights application dismissed -

Board not satisfied that responding companies operating under common control or direction - Related employer application dismissed

INPLANT CONTRACTORS INC. AND 911846 ONTARIO LIMITED C.O.B. AS FLINT INDUSTRIAL SERVICES AND FLINT RIGGERS AND ERECTORS INC.; RE MILLWRIGHT DISTRICT COUNCIL OF ONTARIO ON ITS OWN BEHALF AND ON BEHALF OF LOCAL 1244..... (May)

421

Sale of a Business - Construction Industry - Related Employer - Responding employers operating demolition businesses owned by father and son - Board finding no sale of equipment or other commercial transactions between responding employers, but determining that goodwill in effect transferred from father's business to son's business - Board finding sale of a business - Employers also engaged in same business under joint direction or control - Related employer declaration issuing

KEPIC WRECKING INC. AND 963590 ONTARIO INC. C.O.B. AS KEPIC WRECKING; RE LIUNA, LOCAL 837..... (June)

516

Sale of a Business - Fourteen months following closure of hotel, responding party purchasing lands, buildings and virtually all tangible assets formally used by predecessor employer in hotel operation - Responding party claiming that it purchased collection of idle assets, not "business" or "part of a business" within meaning of the *Act* - Purchaser using core assets to supply same general services to same general market, including some of the same customers - Substantially same jobs being performed in substantially same place in respect of substantially same services for similar market - Hiatus not conclusive where asset configuration substantially intact and continuing at core of "new" business organization - Board finding "sale of a business"

ACCOMODEX FRANCHISE MANAGEMENT INC., KELLORYN HOTEL INC.; RE H.E.R.E., LOCAL 75; RE U.F.C.W., LOCAL 206..... (Apr.)

281

Sale of a Business - Unfair Labour Practice - Respondent appointed by Ontario Court (General Division) as receiver and manager of nursing home in December 1991 - Union complaining that respondent failing to adhere to collective agreement between union and nursing home and refusing to bargain with union - Board finding respondent to be successor employer for purposes of the *Act* - Board remitting remaining issues to parties for consideration and remaining seized

DELOITTE & TOUCHE; RE C.U.P.E. AND ITS LOCAL 1343..... (Feb.)

109

*School Board and Teachers Collective Negotiations Act* - Change in Working Conditions - Unfair Labour Practice - Whether wages and benefits paid to certain employees in bargaining unit constituting contravention of statutory freeze - Board rejecting argument that grievors were statutory form teachers and not occasional teachers within unit applied for - Employer's alteration of those teachers' terms and conditions violating the *Act* - Complaint allowed and compensation ordered

LEEDS AND GRENVILLE COUNTY BOARD OF EDUCATION; RE O.P.S.T.F..... (Feb.)

141

Sector Determination - Adjournment - Construction Industry - Jurisdictional Dispute - Practice and Procedure - Board declining to defer complaint to arbitration proceedings under the agreement between Labourers and Carpenters unions - Board denying request to make determination as to which sector of the construction industry the work in dispute falls into before proceeding with the merits of the jurisdictional dispute - Parties directed to file additional material according to timetable set by the Board

ELLIS-DON LIMITED, THE JACKSON-LEWIS COMPANY LIMITED, EASTERN CONSTRUCTION COMPANY LIMITED AND KONVEY CONSTRUCTION LIMITED; RE C.J.A., LOCAL 27, AND L.I.U.N.A., LOCAL 183..... (Feb.)

120

Sector Determination - Adjournment - Jurisdictional Dispute - Practice and Procedure - Carpenters' and Labourers' unions disputing assignment of carpentry portion of concrete forming work in relation to various outdoor concrete structures, including retaining walls, seating walls, planters and curbs - Labourers' union raising "sector" issue and arguing that "consultation" should be adjourned so that full hearing into sector issue can be held and notice given to all parties - Board satisfied that it can determine sector issue for purpose of jurisdictional dispute proceedings on basis of material before it and consultation with parties - Board satisfied that work in dispute falling in ICI sector and not in "landscaping" sector as submitted by Labourers' union - Board satisfied that trade agreement between Carpenters' and Labourers' union and that area practice supporting Carpenters' union claim - Board directing that work in dispute be assigned to Carpenters' union

ELLIS-DON LIMITED, THE JACKSON-LEWIS COMPANY LIMITED AND EASTERN CONSTRUCTION COMPANY LIMITED; RE CJA, LOCAL 27, AND LIUNA, LOCAL 183 .....(Nov.)

1130

Sector Determination - Construction Industry - Board finding construction of underground concrete water storage tank to be work in the ICI sector of the construction industry, and not in heavy engineering sector or sewer and watermain sector as asserted by Labourers' union - Declaration issuing accordingly

MATHEWS CONTRACTING INC.; RE CJA, LOCAL 18; RE LIUNA .....(Dec.)

1332

Security Guard - Certification - Constitutional Law - Employer in business of providing security services to various clients, including various departments and agencies of the federal government - Security service duties including controlling movement of people and material into and out of federal government buildings, reporting suspicious persons, preventing fires, enforcing fire safety standards and administering first aid - Board not persuaded that security services provided integral to core federal undertaking - Board assuming jurisdiction to consider certification application - Certificate issuing

NATIONAL PROTECTIVE SERVICE COMPANY LIMITED; RE UNITED STEELWORKERS OF AMERICA.....(Apr.)

365

Security Guard - Certification - Sale of a Business - Union applying to represent guards employed by condominium corporation at single location - Security company acquiring contract to provide security services at condominium two weeks later - Security firm already having collective agreement with rival union - Parties agreeing that security company should be named as employer in bargaining unit description - Rival union and employer asserting that collective agreement between them barring certification application - Board deferring consideration of certification application pending filing by interested party of sale of business application under section 64 of the *Act*

MEADOWVALE SECURITY GUARD SERVICES INC.; CANADIAN UNION OF PROFESSIONAL SECURITY-GUARDS; RE THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (CLAC) .....(Dec.)

1340

Security Guards - Adjournment - Build-Up - Certification - Parties - Representation Vote - Sale of a Business - Union making certification application in June 1993 in respect of employees of H - H's contract to provide security services not renewed and W providing those service effective July 1993 - W a successor employer within meaning of section 64.2 of the *Act* - Board permitting W to participate in certification proceeding over union's objection - Board declining to adjourn proceeding to allow union to investigate alleged "freeze" violation by W - Number of positions in bargaining unit increasing from 11 on certification application date to 13 on date of hearing - Board ruling that "build-up" principle not applicable in this case - W and H asking Board to direct representation vote on basis of change in composition of bargaining unit since application date - Employees at work on application date sufficiently representative of work force on hearing date that Board finding it appropriate

to determine application based on assessment of wishes of those employees without representation vote - Interim certificate issuing

HAWK SECURITY SYSTEMS LTD.; RE USWA; RE WAKENHUT OF CANADA LIMITED .....(Aug.)

751

Security Guards - Bargaining Rights - Bargaining Unit - Certification - Union applying to represent employees of security firm - Union urging Board to follow established practice for single location operations of describing bargaining units with reference to the relevant municipality, rather than the specific location where employees work - Security firm's only business activity within municipality at single manufacturing plant - Employer arguing that collective bargaining would be better served if scope of unit were congruent with existing commercial reality - Employer proposing site-specific bargaining unit and submitting that section 64.2 of the *Act* answers any concerns about about fragility of site-specific bargaining rights - Board finding municipal unit appropriate - Certificate issuing

BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE CAW-CANADA ..... (June)

480

Security Guards - Bargaining Unit - Certification - Union's proposed bargaining unit described in terms of regional municipalities or counties - Employer's proposed bargaining unit covering all employees sought by union but described in terms of individual municipalities - Board finding no reason in this case to depart from its usual practice of describing bargaining unit in terms of the municipality in which the workplace(s) is (are) located - Board appointing officer to inquire into parties dispute regarding "employee" status of certain individuals - Union certified on interim basis pending final resolution of matters in dispute between parties

WACKENHUT OF CANADA LIMITED; RE UNITED STEELWORKERS OF AMERICA ..... (Apr.)

393

Security Guards - Certification - Representation Vote - Union applying to be certified for unit of 1100 guards working at 200 sites within 4 separate municipal regions - Board directing representation vote in agreed-upon voting constituency - Union requesting that employer disclose to it addresses of employees on voters' list - Board directing employer to produce labels containing names and addresses of persons on voters' list and to allow union representatives to attend employer's office with sealed envelopes to be labelled and mailed by representatives of union and employer together - Board directing that all reasonable costs associated with mailing to be borne by union

METROPOL SECURITY SERVICES, BARNES SECURITY SERVICES LIMITED C.O.B. AS; RE USWA ..... (Nov.)

1154

Settlement - Adjournment - Discharge - Environmental Protection Act - Evidence - Health and Safety - Practice and Procedure - Employer seeking adjournment pending disposition of application in Ontario Court (General Division) for declaration that enforceable settlement entered into by the parties - Adjournment request denied - Board dismissing objection to anticipated evidence of complainant's former counsel - Evidence of communications between solicitors in furtherance of settlement not privileged where existence of agreement constituting issue in dispute - Board finding complaint settled in absence of signed documents confirming settlement and declining to inquire further into complaint

FUJI HUNT PHOTOGRAPHIC CHEMICALS LTD., FUJI PHOTO FILM CANADA INC. AND FUJI PHOTO FILM CO. LTD.; RE FRED NICHOLAS ..... (June)

494

Settlement - Collective Agreement - Reference - Minister of Labour referring question to Board as to existence of collective agreement between the parties - Union acknowledging signed memorandum of settlement as well as ratification by members, but asserting that in absence of written notification to employer of ratification, settlement not elevated to status of col-

lective agreement - Written notice of ratification not required - Board advising Minister that collective agreement in effect between the parties

DDM PLASTICS INC.; RE IAM, LOCAL LODGE 2792.....(Dec.) 1265

Settlement - Occupational Health and Safety - Practice and Procedure - Employer asking Board not to inquire into complaint on the basis that the matter had been settled - Board finding no good reason to permit the applicant to resile from his agreement and some good reasons not to permit him to do so - Board not inquiring further into complaint

STEEP ROCK RESOURCES INC.; RE CHRIS WALKER; RE TEAMSTERS LOCAL UNION 91 .....(July) 680

Stay - Charter of Rights and Freedoms - Constitutional Law - Practice and Procedure - Unfair Labour Practice - Board earlier setting matter down for hearing to receive parties' submissions on Board's jurisdiction to hear and decide complaint in light of court order under *Companies' Creditors' Arrangement Act* (CCAA) - Board reserving decision after hearing union's arguments regarding effect of *Charter of Rights and Freedoms* on order under CCAA

LANDAWN SHOPPING CENTRES LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA).....(Dec.) 1318

Stay - Discharge - Intimidation and Coercion - Judicial Review - Unfair Labour Practice - Board finding employer in violation of the *Act* in respect of severity of penalty imposed on one employee for releasing confidential information regarding employee names and telephone numbers, the exclusion of another employee from working in the office, and in respect of communications about unions in meetings with employees - Board dismissing complaint in relation to other discipline and hiring practices and meetings at two other employer locations - Employer applying for judicial review of Board's decision and seeking interim relief - Motions judge staying Board's decision - Order of motions judge set aside by 3-judge panel of Divisional Court on basis that judge applied wrong test on a stay and on basis of certain factual errors in her decision - Divisional Court holding that strong *prima facie* case that decision patently unreasonable must be made out before a stay should be granted

SOBEYS INC. RE; U.F.C.W., LOCAL 1000A.....(Feb.) 155

Stay - Practice and Procedure - Unfair Labour Practice - Subsequent to union's unfair labour practice complaint being filed, employer obtaining *ex parte* court order under *Companies' Creditors' Arrangement Act* staying proceedings before the Board - Registrar directed to set matter down for hearing to receive parties' submissions on Board's jurisdiction to hear and decide complaint in light of court's order

LANDAWN SHOPPING CENTRES LIMITED; NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) .....(Nov.) 1150

Strike - Abandonment - Bargaining Rights - Conciliation - Construction Industry - Evidence - Judicial Review - Employer asserting that threatened strike unlawful on ground that union had previously abandoned bargaining rights - Threatened strike following timely "notice to bargain", appointment of conciliation officer and issuance of "no board" report - Board declining to inquire into continued existence of bargaining rights in circumstances of this case - Board also not accepting employer's assertion that threatened picketing by union improperly motivated and, therefore, unlawful - Application dismissed - Employer applying for judicial review and seeking to have matter heard before single judge on grounds of

urgency - Court not satisfied that matter "urgent" and transferring application to Divisional Court

ASSOCIATED CONTRACTING INC.; RE THE QUEEN IN RIGHT OF ONTARIO (MINISTER OF LABOUR), THE OLRB AND IUOE, LOCAL 793 ..... (Oct.) 1071

Strike - Abandonment - Bargaining Rights - Conciliation - Construction Industry - Evidence - Picketing - Employer asserting that threatened strike unlawful on ground that union had previously abandoned bargaining rights - Threatened strike following timely "notice to bargain", appointment of conciliation officer and issuance of "no board" report - Board declining to inquire into continued existence of bargaining rights in circumstances of this case - Board also not accepting employer's assertion that threatened picketing by union improperly motivated and, therefore, unlawful - Application dismissed

ASSOCIATED CONTRACTING INC.; RE MICHAEL GALLAGHER AND IUOE, LOCAL 793 ..... (Nov.) 1117

Strike - Combination of Bargaining Units - Interim Relief - Lock-Out - Remedies - Union seeking interim order prohibiting otherwise lawful strikes or lock-outs pending disposition of application to combine bargaining units - Board not finding reasons advanced for order sought sufficient to justify its imposition

THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF OTTAWA; RE IBEW, LOCAL 636 ..... (Nov.) 1231

Strike - Strike Replacement Workers - Unfair Labour Practice - Whether "supervision" of apprentice projectionist constituting bargaining unit work which, when performed by assistant manager transferred to struck location after notice to bargain, violating section 73.1 of the *Act* - Board finding that operating projection equipment constituting bargaining unit work and that getting work done in a different way not altering characterization as bargaining unit work - Use of assistant manager in this case to supervise apprentice projectionist contravening *Act* - Employer directed to stop using assistant manager for this purpose and Board remaining seized with respect to any outstanding remedial issues

FAMOUS PLAYERS INC.; RE IATSE, LOCAL 357 ..... (Dec.) 1270

Strike - Strike Replacement Workers - Union commencing strike in October 1992 - Amendments to *Labour Relations Act*, including those prohibiting use of strike replacement workers, proclaimed in force on January 1, 1993 - Board determining that statutory provisions prohibiting use of strike replacements applying to strike which commenced prior to January 1, 1993 - Responding parties' preliminary motion to dismiss application denied

PIZZA PIZZA LIMITED ("PPL"), FRANCHISE OWNERS TORONTO LIMITED ("FOTL"), 958424 ONTARIO INC., CARRYING ON BUSINESS AS RAPCO MANAGEMENT SERVICES ("RAPCO"), 930571 ONTARIO INC., CARRYING ON BUSINESS AS BOSS TECHNICAL SERVICES ("BOSS"), 3C COMPLETE COMMUNICATIONS CONSULTING INC. ("3C"), WILLOW TELECOMMUTING SYSTEMS CANADA INC. AND WILLOW TELECOMMUNICATIONS CORPORATION (COLLECTIVELY "WILLOW"); RE U.F.C.W., LOCAL 175 ..... (Apr.) 373

Strike - Unfair Labour Practice - Union asserting that employer violated *Act* when it denied bonus payments to striking employees in the years 1991 and 1992 - Board finding that while it may have been permissible for employer to have withheld bonus payments to striking employees under strict terms of "recognition bonus plan", its reasons for doing so were not free of anti-union or prohibited considerations - Employer directed to compensate employees

THE CAMBRIDGE REPORTER, A DIVISION OF THOMSON NEWSPAPERS CORPORATION, THOMSON NEWSPAPERS CORPORATION AND; RE SOUTHERN ONTARIO NEWSPAPER GUILD ..... (Oct.) 1035

Strike Replacement Workers - Picketing - Right of Access - Unfair Labour Practice - Board finding that company violated section 73.1 of the *Act* by using prohibited replacement workers to perform work where employees on strike - Board making cease and desist order and directing that its decision be posted on outside of each struck store - Board declining company's request for restrictions on picketing under section 11.1 of the *Act* - Board noting that picketing had generally been peaceful, that section 11.1 contemplating some disruption without giving rise to restrictions, and that company made little attempt to utilize other means of assistance available to it

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED; RE UFCW, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK AND CLIFF SKINNER ..... (Nov.)

1230

Strike Replacement Workers - Strike - Unfair Labour Practice - Whether "supervision" of apprentice projectionist constituting bargaining unit work which, when performed by assistant manager transferred to struck location after notice to bargain, violating section 73.1 of the *Act* - Board finding that operating projection equipment constituting bargaining unit work and that getting work done in a different way not altering characterization as bargaining unit work - Use of assistant manager in this case to supervise apprentice projectionist contravening *Act* - Employer directed to stop using assistant manager for this purpose and Board remaining seized with respect to any outstanding remedial issues

FAMOUS PLAYERS INC.; RE IATSE, LOCAL 357 ..... (Dec.)

1270

Strike Replacement Workers - Strike - Union commencing strike in October 1992 - Amendments to *Labour Relations Act*, including those prohibiting use of strike replacement workers, proclaimed in force on January 1, 1993 - Board determining that statutory provisions prohibiting use of strike replacements applying to strike which commenced prior to January 1, 1993 - Responding parties' preliminary motion to dismiss application denied

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373

Termination - Bargaining Rights - Certification - Practice and Procedure - Timeliness - Union responding to employer application to terminate bargaining rights under section 60 of the *Act* by consenting to Board order terminating bargaining rights - Union applying for certification in respect of same bargaining unit two weeks later - Board rejecting employer's argument that it ought to refuse to entertain union's certification application and that any new certification application should be barred for six months - Certificate issuing

CRANE CANADA INC.; RE LIUNA, LOCAL 247 ..... (Oct.)

957

Termination - First Contract Arbitration - Judicial Review - Employer initially refusing to meet to bargain, subsequently attempting to delay commencement of bargaining and refusing to provide union with accurate collective bargaining information to which it was entitled - Employer engaging in surface bargaining - Employer positions with respect to management rights, wages, benefits and classifications uncompromising and without reasonable justification - First contract arbitration directed - Board dismissing termination application pursuant to subsection 40a(22) of the *Act* - Employer applying for judicial review on ground that the union had ceased to exist and, therefore, lacked the legal status to request conciliation (which was a statutory pre-condition for the Board's decision) - Employer also submitting

that that Board committed jurisdictional error in its interpretation of s.40a(22) of the *Act* - Judicial Review application dismissed by Divisional Court - Application for leave to appeal dismissed by Court of Appeal

KNOB HILL FARMS LIMITED; RE U.F.C.W., LOCAL 206, THE CROWN IN RIGHT OF ONTARIO (MINISTER OF LABOUR), THE OLRB AND SUSAN CATERINA .....(Jan.)

83

Termination - *Hospital Labour Disputes Arbitration Act* - Employer seeking to terminate union's bargaining rights for failure to commence bargaining within 60 days of giving notice to bargain - Union not pursuing collective bargaining in a timely manner without reasonable explanation, but continuing to have contact with and pursue grievances on behalf of bargaining unit employees - Board directing representation vote

RIVERVIEW MANOR NURSING HOME; RE O.N.A. ....(Jan.)

54

Termination - Practice and Procedure - Reconsideration - Board exercising its discretion under section 105(2)(i) of the *Act* to refuse to entertain subsequent termination application where employee wishes with respect to representation were tested in earlier termination application - Board declining to impose bar on further termination applications - Termination application dismissed - Reconsideration application dismissed

VENTURE INDUSTRIES CANADA LTD.; RE RANDY A. BURKE; RE CAW-CANADA .....(June)

572

Termination - Practice and Procedure - Timeliness - Board exercising its discretion under section 105(2)(i) to refuse to entertain second termination application made by applicant within period of a few weeks - Application dismissed - Applicant also barred from filing new termination applications for a period of six months

VENTURE INDUSTRIES CANADA LTD. (THE "COMPANY" OR "THE EMPLOYER"); RE RANDY A. BURKE; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 127 ("THE UNION") .....(July)

707

Termination - Representation Vote - Whether representation vote should be ordered (and ballot box sealed) pending resolution of issue of timeliness of termination application - Board questioning jurisdiction to order vote in circumstances where timeliness of application undetermined - Board adopting practice in certification procedure (to resolve entitlement issues before directing a vote) and declining to order vote until timeliness issue resolved

SPOONERS' RESTAURANT, EMPLOYEES OF 598142 ONTARIO LIMITED CARRYING ON BUSINESS AS; RE THE R.W.D.S.U., LOCAL 448; RE 598142 ONTARIO LIMITED C.O.B. AS SPOONERS' RESTAURANT .....(Jan.)

77

Termination - Voluntary Recognition - Applicant asserting that trade union was not, at the time it entered into a voluntary recognition agreement with employer, entitled to represent employees in the bargaining unit - Board satisfied that results of ratification vote showing that vast majority of employees in the bargaining unit supported the voluntary recognition agreement and the union - Application dismissed

ONTARIO HYDRO, ROBERT S. HIGGINS; RE ERIC DE BUDA; RE THE SOCIETY OF ONTARIO HYDRO PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES.....(Jan.)

46

Timeliness - Abandonment - Bargaining Rights - Certification - Construction Industry - Certification applications brought by Bricklayers' union and Labourers' union barred by collective agreement between City and CUPE - Board satisfied that CUPE collective agreement applying to groups of employees whom applicants seeking to represent - Board rejecting

alternative argument that CUPE abandoned bargaining rights with respect to employees covered by certification applications - Applications dismissed

CORPORATION OF THE OF CITY OF ST. THOMAS; RE BAC, LOCAL 5; RE CUPE..... (May) 408

Timeliness - Bargaining Rights - Certification - Practice and Procedure - Termination - Union responding to employer application to terminate bargaining rights under section 60 of the *Act* by consenting to Board order terminating bargaining rights - Union applying for certification in respect of same bargaining unit two weeks later - Board rejecting employer's argument that it ought to refuse to entertain union's certification application and that any new certification application should be barred for six months - Certificate issuing

CRANE CANADA INC.; RE LIUNA, LOCAL 247..... (Oct.) 957

Timeliness - Certification - Collective Agreement - Parties - Reconsideration - Labourers' union seeking reconsideration of decision to grant early termination of collective agreement between CLAC and employer on ground that posting of Notice to Employees was inadequate - Labourers' union filing certification application in what would otherwise have been open period of collective agreement - Labourers' union having sufficient interest to justify granting standing in its own right to seek reconsideration of early termination decision - Board finding posting of Notice to Employees inadequate - Institutional interest of Board in providing adequate notice to affected employees outweighing reliance interest of company and CLAC on finality of Board's early termination decision - Reconsideration application allowed - Upon counting of ballots, Labourers' certification application dismissed

LEDCOR INDUSTRIES LIMITED; RE CHRISTIAN LABOUR ASSOCIATION OF CANADA .....(Aug.) 758

Timeliness - Construction Industry - Evidence - Jurisdictional Dispute - Practice and Procedure - Reconsideration - Board making final order in jurisdictional dispute complaint following consultation with parties - Labourer's union requesting reconsideration and arguing that Board improperly refused to hear certain evidence, that there was no evidence to support certain findings, and that Board misinterpreted material before it - Board explaining its approach to requests for reconsideration given need for finality in its adjudication - Board also explaining new "consultation" procedure for resolving jurisdictional dispute complaints - Board finding no reason to reconsider its disposition of the complaint - EPSCA's separate reconsideration request dismissed as untimely under Rule 85 and on its merits

ONTARIO HYDRO, EPSCA, LIUNA, LOCAL 1059; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE, SMW, LOCAL 473 ..... (May) 442

Timeliness - Termination - Practice and Procedure - Board exercising its discretion under section 105(2)(i) to refuse to entertain second termination application made by applicant within period of a few weeks - Application dismissed - Applicant also barred from filing new termination applications for a period of six months

VENTURE INDUSTRIES CANADA LTD. (THE "COMPANY" OR "THE EMPLOYER"); RE RANDY A. BURKE; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 127 ("THE UNION") ..... (July) 707

Trade Union - Discharge - Duty of Fair Representation - Remedies - Trade Union Status - Unfair Labour Practice - Applicant claiming that Association's failure to advance discharge grievance to arbitration violating the *Act* - Board rejecting assertion of Association and employer that Association not a trade union within the meaning of the *Act* - Board finding that Association violating its duty to applicant under section 69 of the *Act* by never turning its mind to merits of applicant's case - Association directed to consider merits of applicant's

case, to conduct any investigation its feels appropriate, and to advise applicant within specified period of what it intends to do and the reasons for its decision

SUSAN FORBES; RE THE SIMCOE COUNTY ROMAN CATHOLIC SEPARATE SCHOOL CUSTODIANS; THE SIMCOE COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD..... (Dec.)

1283

Trade Union Status - Discharge - Duty of Fair Representation - Remedies - Trade Union - Unfair Labour Practice - Applicant claiming that Association's failure to advance discharge grievance to arbitration violating the *Act* - Board rejecting assertion of Association and employer that Association not a trade union within the meaning of the *Act* - Board finding that Association violating its duty to applicant under section 69 of the *Act* by never turning its mind to merits of applicant's case - Association directed to consider merits of applicant's case, to conduct any investigation its feels appropriate, and to advise applicant within specified period of what it intends to do and the reasons for its decision

SUSAN FORBES; RE THE SIMCOE COUNTY ROMAN CATHOLIC SEPARATE SCHOOL CUSTODIANS; THE SIMCOE COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD..... (Dec.)

1283

Trusteeship - Canadian Paperworkers Union seeking consent under s.84 of the *Act* to continue its supervision or control with respect to 4 local unions for further period of 12 months - Board satisfied that it has jurisdiction under s.84 where locals under trusteeship no longer hold bargaining rights - Dispute over disposition of assets held by four local unions and issue of validity of trusteeship, including whether trusteeship imposed in bad faith or contrary to union constitution, is one to be resolved by the courts - Board consenting to continuation of trusteeship for 12 months

CANADIAN PAPERWORKERS UNION; RE C.P.U., LOCAL 1199..... (Feb.)

99

Unfair Labour Practice - Adjournment - Arbitration - Intimidation and Coercion - Practice and Procedure - Board adjourning applicant's unfair labour practice complaint *sine die* pending completion of arbitration process - Board to deal with case after arbitrator's decision if necessary to do so - Board directing that copies of its decision be posted in workplace

FORTINOS SUPERMARKET LIMITED; RE ERROL MCKENZIE KETTEL; RE UFCW, LOCALS 175/633..... (Oct.)

974

Unfair Labour Practice - Adjournment - Construction Industry - Damages - Discharge - Practice and Procedure - Parties - Remedies - Board denying adjournment where request coming in the form of fax to Board on eve of hearing accompanied by unsatisfactory, two-month old medical certificate - Board satisfied that lay-offs motivated, at least in part, by anti-union *animus* - Owner found personally liable for breaches of the *Act* in addition to breaches of the *Act* committed by corporate respondent - Corporate and individual respondents jointly and severally liable for damages assessed at over \$24,000 payable to union on its own behalf and on behalf of members who grieved

CLASSIC MASONRY INC. AND LOUIS TRINDADE; RE B.A.C., LOCAL 5 ... (Aug.)

721

Unfair Labour Practice - Adjournment - Evidence - Practice and Procedure - Board declining to adjourn unfair labour practice complaint pending resolution of employment status issue - Board declining to dismiss application for want of particulars - Board declining to dismiss application for failure to raise *prima facie* case - Board directing responding party to proceed first with its evidence

THE ESSEX COUNTY BOARD OF EDUCATION; RE OSSTF ..... (July)

687

Unfair Labour Practice - Adjournment - Practice and Procedure - Parties agreeing to *sine die* adjournment of unfair labour practice complaint in which union had requested expedited hearing under section 92.2 of the *Act* - Board taking union's adjournment request to be

withdrawal of request for expedited hearing - Board granting *sine die* adjournment, but for period not to exceed three months

COOPER INDUSTRIES (CANADA) INC. C.O.B. AS WAGNER DIVISION OF COOPER INDUSTRIES (CANADA) INC.; RE UNITED STEELWORKERS OF AMERICA.....(Mar.) 157

Unfair Labour Practice - Adjustment Plan - Discharge - Interference in Trade Unions - Interim Relief - Remedies - Bargaining unit chairperson discharged some months before scheduled closure of part of employer's plant - Chairperson's discharge grievance being arbitrated, but arbitration proceeding likely to continue beyond closure date - Employer refusing to discuss adjustment plan with union so long as chairperson included on union's bargaining committee - Union seeking order preventing employer from refusing to allow chairperson to participate as member of union committee negotiating adjustment plan - Employer identifying no significant harm resulting from granting order sought - Board directing employer to cease and desist from refusing to recognize and deal with chairperson as member of union committee, and also to meet with union committee in order that parties may bargain in good faith to make adjustment plan

CROWN FAB DIVISION, THE ALLEN GROUP CANADA, LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 1256 ... (Oct.) 960

Unfair Labour Practice - Bargaining Rights - Collective Agreement - Construction Industry - Parties - Practice and Procedure - Board satisfied that applicants having status to bring complaint and that application ought not to be dismissed on basis of asserted delay - London Construction Association alleging that purported collective agreement between London Concrete Forming Contractors and Labourers' union violating section 148 of the *Act* - Applicant requesting that Board declare agreement to be void as it relates to ICI sector of the construction industry - Ontario Formwork Agreement a product of bargaining relationship specifically exempted from section 148(2) of the *Act* and Board satisfied that impugned agreement binding London Contractors to that agreement - Application dismissed

LONDON AND DISTRICT CONSTRUCTION ASSOCIATION AND LABOUR RELATIONS BUREAU OF THE ONTARIO GENERAL CONTRACTORS ASSOCIATION; RE LIUNA, LOCAL 1059; RE CONCRETE FORMING (1980) LIMITED, ROCKWELL CONCRETE FORMING (LONDON) LIMITED, WALLOY MATERIALS LIMITED, FOREST CITY FORMING LTD., LIDER GENERAL CONSTRUCTION LTD., O.S. CONCRETE FORMING INC., CO-FO CONCRETE FORMING LIMITED.....(Dec.) 1320

Unfair Labour Practice - Bargaining Rights - Construction Industry - Interim Relief - Practice and Procedure - Remedies - Bricklayers' union Local 2 alleging that Builders Association, Labourers' union and others committing unfair labour practice by, *inter alia*, agreeing to sub-contracting clause in collective agreement between them requiring bricklaying work to be performed by companies bound to agreement with Labourers' union or Bricklayers' union Local 1 - Local 2 requesting that operation of sub-contracting clause be stayed pending resolution of unfair labour practice complaint - Board commenting on lack of particularity and absence of supporting facts establishing first-hand knowledge in declaration filed by Local 2 - Board also noting that interim relief applications may be decided without oral hearings and that parties who fail to provide complete written representations, as required by Rule 86, do so at their peril - Only very discrete core of Local 2's complaint supporting arguable case - Board considering delay in starting proceedings - No obvious reason why harm to

Local 2 of denying application outweighing harm to responding parties of staying sub-contracting provision - Application for interim order dismissed

METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION AND LIUNA, LOCAL 183; RE BAC, LOCAL 2; RE METROPOLITAN INDUSTRIAL & COMMERCIAL MASONRY CONTRACTORS INC.; RE MASONRY CONTRACTORS ASSOCIATION OF TORONTO INC.....(Mar.)

219

Unfair Labour Practice - Bargaining Rights - Remedies - Sale of a Business - Board, in earlier decision, declaring that sale of a business occurred but that bargaining rights terminated and that collective agreement no longer binding - Parties disputing effective date of declaration - Board considering it appropriate to make declaration effective as of date of "sale", as if transaction never occurred, and so directing - Board also ruling on parameters of available relief in connection with earlier finding that employer had violated section 67 of the *Act* - Alternate Chair appointed to meet with parties and assist them in resolving outstanding issues

KITCHENER WATERLOO HOSPITAL; RE ONA; RE GROUP OF EMPLOYEES.....(Mar.)

187

Unfair Labour Practice - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Intimidation and Coercion - Remedies - Board finding that employer embarked on scheme of harassment and intimidation of union organizers and supporters and accepting that termination of certain employees motivated by involvement in union organizing campaign - Board satisfied that, as result of employer violations of the *Act*, true wishes of employees unlikely to be ascertained - Board regarding it as unnecessary to consider whether or not union having adequate membership support for collective bargaining, in view of clear direction to the Board in legislature's amendment of section 9.2 of the *Act* - Certificate issuing

CARLETON UNIVERSITY STUDENTS' ASSOCIATION INC.; RE CUPE ..... (Oct.)

938

Unfair Labour Practice - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Remedies - Board finding that employer violated *Act* by discharging certain employees and by seeking return of materials provided to employees by the union - Board directing that employees be reinstated with compensation and certifying union under section 9.2 of the *Act* - Board directing that union be permitted to convene meeting of employees on company premises during working hours and directing employer to provide union with list of employees' names, addresses and telephone numbers

ROYAL SHIRT COMPANY LIMITED; RE ACTWU .....(Nov.)

1177

Unfair Labour Practice - Certification - Constitutional Law - Employer acting as common carrier engaged in haulage of waste - Employer transporting waste materials on regular and continuous basis to various locations in USA - Board accepting assertion that employer's labour relations falling exclusively within legislative competence of Parliament of Canada - Applications dismissed

BROWNING-FERRIS INDUSTRIES LTD.; RE TEAMSTERS LOCAL UNION NO. 419..... (Oct.)

933

Unfair Labour Practice - Change in Working Conditions - Damages - *Hospital Labour Disputes Arbitration Act* - Remedies - Board determining and declaring that certain scheduling changes affecting job sharing arrangements violating statutory "freeze" - Board declining to direct employer to restore previous work schedules in view of collective agreement made by parties subsequent to filing complaint, but directing that affected employees be compensated according to formula set out in decision

OAKVILLE LIFECARE CENTRE; RE ONA ..... (Oct.)

980

- Unfair Labour Practice - Change in Working Conditions - *Hospital Labour Disputes Arbitration Act* - Union alleging that employer breaching statutory "freeze" by altering hours of work of employees without its consent - Board satisfied that nothing in collective agreement or long-standing scheduling practice precluding the scheduling changes complained of - Applications dismissed
- MOHAWK HOSPITAL SERVICES INC.; RE CUPE, LOCAL 1605..... (Sept.) 873
- Unfair Labour Practice - Change in Working Conditions - Interim Relief - Remedies - Union alleging that school board employers' planned measures regarding taking of vacations breaching statutory freeze - Unions asking Board to make interim order directing employers to permit employees to choose when they will take vacation during July and August - Union not relying on any potential harm beyond difficulty in remedy to individual employees - Union not asserting any effect on wider labour relations context between parties - In absence of broader labour relations considerations, balance of harm not weighing in favour of making interim order - Applications dismissed
- LA SECTION CATHOLIQUE DU CONSEIL SCOLAIRE DE LANGUE FRANÇAISE D'OTTAWA-CARLETON; RE ASSOCIATION DES EMPLOYÉS D'OTTAWA-CARLETON (EMPLOYÉS DE BUREAU, DE SECRÉTARIAT ET EMPLOYÉS TECHNIQUES) ..... (Sept.) 844
- Unfair Labour Practice - Change in Working Conditions - *School Board and Teachers Collective Negotiations Act* - Whether wages and benefits paid to certain employees in bargaining unit constituting contravention of statutory freeze - Board rejecting argument that grievors were statutory form teachers and not occasional teachers within unit applied for - Employer's alteration of those teachers' terms and conditions violating the *Act* - Complaint allowed and compensation ordered
- LEEDS AND GRENVILLE COUNTY BOARD OF EDUCATION; RE O.P.S.T.F. .... (Feb.) 141
- Unfair Labour Practice - Charter of Rights and Freedoms - Constitutional Law - Practice and Procedure - Stay - Board earlier setting matter down for hearing to receive parties' submissions on Board's jurisdiction to hear and decide complaint in light of court order under *Companies' Creditors' Arrangement Act* (CCAA) - Board reserving decision after hearing union's arguments regarding effect of *Charter of Rights and Freedoms* on order under CCAA
- LANDAWN SHOPPING CENTRES LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA).....(Dec.) 1318
- Unfair Labour Practice - Collective agreement - Duty to Bargain in Good Faith - Interference with Trade Unions - Final Offer Vote - Employer final offer containing duration clause of June 30, 1993 to July 1, 1993 - Final offer vote under section 40 the *Act* taking place in December 1992 resulting in acceptance by employees - Union refusing to execute offer - Union asking Board to direct extension of duration clause contained in final offer to one year from date of final offer vote and to require execution of collective agreement bearing that term - Union's application dismissed
- PEACOCK LUMBER LTD.; RE RWDSU, AFL-CIO-CLC .....(July) 633
- Unfair Labour Practice - Construction Industry - Change in Working Conditions - Duty to Bargain in Good Faith - Remedies - Employer violating "statutory freeze" in failing to contact union office when it needed new employees and in failing to pay wages and benefits required by collective agreement - Employer directed to compensate union on behalf of its members -Employer operating entirely outside terms of agreement during period of bargaining - Employer failing to make every reasonable effort to make a collective agreement -

In circumstances of this case, however, Board preferring to allow bargaining process to continue rather than to impose settlement on the parties under section 91(4)(d) of the *Act* - Parties directed to meet and bargain in good faith

GENERAL WOOD PRODUCTS; RE CJA, LOCAL 1072 ..... (July) 597

Unfair Labour Practice - Construction Industry - Duty of Fair Referral - Parties - Practice and Procedure - Business manager neither a necessary nor a proper party - Board granting respondent's motion to dismiss application as against union's business manager - Union's business representative and business manager referring out-of-work members on basis of their subjective and personal opinions of members' qualifications, abilities and interests - Union found to have contravened its own hiring hall working rules and section 70 of the *Act* - Complaint allowed and compensation ordered

STEVEN SHEPPARD; RE BRIAN CHRISTIE, UA, LOCAL 463 ..... (June) 555

Unfair Labour Practice - Construction Industry - Duty of Fair Referral - Remedies - Board previously upholding complaint and reconvening on issue of damages - Board concluding that duty of fair referral complainant owing duty to union to mitigate losses, but not obliged to accept referrals as apprentice to fulfill duty - Board also deciding that damages should be reduced because of complainant's unreasonable delay in filing complaint

JAMES N. KRALL; RE C.J.A., LOCAL 785 ..... (Jan.) 39

Unfair Labour Practice - Construction Industry - Duty of Fair Referral - Union imposing fine on complainant following trial and conviction - Union refusing to issue referral slip to complainant in response to requested name hire - Union's conduct in a number of respects found to be arbitrary, discriminatory and in bad faith - Board directing that complainant be compensated for losses flowing from violation of the *Act* and remaining seized

MICHAEL A. RANKIN; RE LOCAL 721 OF THE BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS OF AMERICA ..... (July) 644

Unfair Labour Practice - Damages - Discharge - Duty of Fair Representation - Remedies - Board earlier finding union in violation of duty of fair representation, but parties failing to agree on appropriate remedy - Reinstatement with compensation for nine months lost wages ordered - In assessing damages, Board not taking into account two-month delay in complaining to Board, but making deduction for failure to adequately mitigate and for complainant's admitted misconduct prior to discharge

TIM TURNER; RE THE RETAIL, WHOLESALE BAKERY AND CONFECTION-  
ERY WORKERS UNION, LOCAL 461 OF THE R.W.D.S.U. AFL:CIO:CLC AND  
RICK KENT, ALF DAVIS, GARY SAGE, AB PLAYER; RE WESTON  
BAKERIES ..... (Aug.) 811

Unfair Labour Practice - Damages - Duty to Bargain in Good Faith - Final Offer Vote - Interference in Trade Unions - Judicial Review - Lockout - Natural Justice - Remedies - Employer engaging in illegal lockout by transferring bargaining unit work to another company immediately before strike/lockout deadline - Work transfer motivated at least in part by desire to avoid union - Employer breaching duty to bargain in good faith by sending uninformed representatives to bargaining table, by failing to disclose contemplated transfer of work, and by bargaining directly with employees hired to work at other company - Direct bargaining constituting interference in trade union - Employer demand for employee consent to release of addresses for final offer vote constituting interference in trade union - Board ordering employer to cease and desist from violations of *Act* - Board ordering resumption of bargaining meetings - Board ordering employer to compensate all bargaining unit employees for monetary losses arising out of breaches - Board ordering employer to pay union's negotiating costs - Board ordering employer to return work to original company and make no further movement without disclosure to union - Board ordering employer to

provide union with names and addresses of bargaining unit employees as of lockout date and to advise of additions or changes - Board ordering workplace Notice of Posting signed personally by employer - Board ordering copy of decision to be mailed to all bargaining unit employees - Employer applying for judicial review and submitting that Board exceeded its jurisdiction and breached rules of natural justice - Judicial review application dismissed by Divisional Court

PLAZA FIBREGLAS MANUFACTURING LIMITED, PLAZA ELECTRO-PLATING LTD., CITCOR MANUFACTURING LTD. AND SABINA CITRON; RE: ONTARIO LABOUR RELATIONS BOARD AND UNITED STEELWORKERS OF AMERICA.....(Jan.)

83

Unfair Labour Practice - Discharge - Discharge for Union Activity - Evidence - Interim Relief - Practice and Procedure - Remedies - Board commenting on importance of filing accurate declarations confirmed by persons with first-hand knowledge - Board unwilling to rely on hearsay material - Union alleging that employee discharged for union activity and seeking interim reinstatement with compensation - Employer denying anti-union *animus* and claiming that discharge motivated by employee having lied to management about theft committed by another employee - Board rejecting argument that interim relief power should be used only in rare and exceptional circumstances - Board concluding that complaint and declarations reflecting arguable case on the merits - Board noting chilling effect of discharge on organizing campaign and that union organizing drive a relatively fragile enterprise in which momentum is often critical - Board recognizing potential harm to employer in temporary negative effect on managerial authority and on its policy regarding theft - On balance, harm from granting order held to be less than harm which might flow from not granting it - Board directing interim reinstatement, but declining to award interim compensation

LOEB HIGHLAND, 810048 ONTARIO LIMITED C.O.B. AS; RE UFCW, LOCAL 175/633.....(Mar.)

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Unfair Labour Practice - Discharge - Discharge for Union Activity - Evidence - Interim Relief - Practice and Procedure - Remedies - Board commenting on importance of filing accurate declarations confirmed by persons with first-hand knowledge - Board unwilling to rely on hearsay material - Union alleging that employee discharged for union activity and seeking interim reinstatement with compensation - Employer denying anti-union *animus* and claiming that discharge motivated by employee having lied to management about theft committed by another employee - Board rejecting argument that interim relief power should be used only in rare and exceptional circumstances - Board concluding that complaint and declarations reflecting arguable case on the merits - Board noting chilling effect of discharge on organizing campaign and that union organizing drive a relatively fragile enterprise in which momentum is often critical - Board recognizing potential harm to employer in temporary negative effect on managerial authority and on its policy regarding theft - On balance, harm from granting order held to be less than harm which might flow from not granting it - Board directing interim reinstatement, but declining to award interim compensation

LOEB HIGHLAND, 810048 ONTARIO LIMITED C.O.B. AS; RE UFCW, LOCAL 175/633.....(Apr.)

354

Unfair Labour Practice - Discharge - Discharge for Union Activity - Evidence - Practice and Procedure - Employer claiming that employee discharged for having lied to management about theft committed by another employee - Union objecting to introduction of evidence about "similar incident" involving other employee on ground that it pertained to material fact which had not been set out in employer's response - Board relying on Rule 20 of Board's Rules of Procedure to uphold objection - Discharge tainted by anti-union *animus* - Board finding that employer violated the Act when it met with employee to discuss his organizing

- activities and when the employee was discharged - Reinstatement with compensation ordered
- LOEB IGA HIGHLAND, 810048 ONTARIO LTD. C.O.B. AS; RE UFCW, LOCAL 175/633.....(Mar.) 208
- Unfair Labour Practice - Discharge - Discharge for Union Activity - Interference in Trade Unions - Intimidation and Coercion - Remedies - Board finding lay-offs partly or wholly motivated by anti-union sentiment and that Act violated when employer threatened to close plant if union came in - Complaint allowed - Reinstatement with compensation ordered - Employer also directed to mail Board notices to bargaining unit members at their homes
- BARTON FEEDERS INC.; RE U.F.C.W., LOCAL 633 ..... (Feb.) 89
- Unfair Labour Practice - Discharge - Discharge for Union Activity - Interim Relief - Practice and Procedure - Remedies - Whether declarations filed by the parties deficient - Board noting that where the only support for a critical aspect of a party's case is a hearsay portion of a declaration, the Board may attach little or no weight to that portion of the declaration - Whether to reinstate union organizers accused by employer of theft pending final disposition of unfair labour practice complaint - Potential labour relations harm sought to be avoided by union significantly greater than potential harm to employer of temporary reinstatement - Interim reinstatement ordered
- EAST SIDE MARIO'S, 988421 ONTARIO INC. C.O.B. AS; U.F.C.W., LOCAL 175/633.....(Aug.) 744
- Unfair Labour Practice - Discharge - Discharge for Union Activity - Interim Relief - Remedies - Board directing employer to reinstate employees on an interim basis pending disposition of their unfair labour practice discharge complaint - Employer also directed to post Board notice in workplace and to provide copies of notice to employees affected by union's certification application
- TATE ANDALE CANADA INC.; RE USWA.....(Mar.) 254
- Unfair Labour Practice - Discharge - Discharge for Union Activity - Interim Relief - Remedies - Board directing employer to reinstate employees on interim basis pending disposition of unfair labour practice discharge complaint - Employer also directed to provide copy of Board notice to all employees affected by union's certification application
- CMP GROUP (1985) LTD.; RE LAUNDRY & LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847 ..... (Sept.) 824
- Unfair Labour Practice - Discharge - Discharge for Union Activity - Interim Relief - Remedies - Board directing reinstatement of discharged employees on interim basis pending final disposition of unfair labour practice complaint - Employer also directed to post Board notice in prominent places in workplace
- EAST SIDE MARIO'S, 988421 ONTARIO INC. C.O.B. AS; RE UFCW, LOCAL 175/633..... (July) 587
- Unfair Labour Practice - Discharge - Discharge for Union Activity - Interim Relief - Remedies - Board noting exceptionally broad language of section 92.1 of the *Act*, as well as its "facilitative" or "forensic" thrust - Board explaining advantages of timely intervention without finding fault - Board assessing potential harm in making or not making interim order from perspective of employer, union, aggrieved employees and other employees who may be affected by impugned conduct and directing interim reinstatement of discharged employees pending disposition of unfair labour practice complaint
- TATE ANDALE CANADA INC.; USWA ..... (Oct.) 1019
- Unfair Labour Practice - Discharge - Discharge for Union Activity - Interim Relief - Remedies -

Union claiming that various lay-offs and changes in employee duties constituting unfair labour practices - Union seeking interim relief pending disposition of unfair labour practice complaint - Board satisfied that important labour relations interests, including preserving ability of employees to freely participate in union activities, outweighing temporary disruption of company's affairs caused by interim orders - Employer ordered to reinstate certain employees and to restore duties or hours to others on interim basis until unfair labour practice complaint determined

J.C.V.R. PACKAGING INC.; RE UNITED STEELWORKERS OF AMERICA..(Nov.) 1145

Unfair Labour Practice - Discharge - Discharge for Union Activity - Interim Relief - Remedies - Union filing complaint in respect of alleged unlawful discharge in August 1992 - Union applying for interim order reinstating discharged employee in February 1993 - In all the circumstances, including the elapsed time between the discharge and the coming into force of section 92.1 and including the applicant's one month delay in filing union's application, Board not satisfied that balance of harm favouring the applicant - Application dismissed

PRICE CLUB CANADA INC.; RE UFCW, LOCAL 175.....(July) 635

Unfair Labour Practice - Discharge - Discharge for Union Activity - Interim Relief - Remedies - Union making complaint in October 1992 alleging that employees unlawfully discharged for union activity - Hearing in discharge complaint commencing in December 1992 and continuing on dates in February, April and May 1993 - Union filing application in February 1993 seeking interim reinstatement of employees pending final determination of complaint - Assuming truth of allegations, complaint making out arguable case for remedies sought - Board weighing relative labour relations harm resulting from granting or not granting interim order sought and declining to order interim relief - Delay militating against granting interim relief - Board not persuaded that interim order power ought to be used to limit or avoid harm which is purely financial - Application dismissed

MORRISON MEAT PACKERS LTD.; RE U.A.W. ....(Apr.) 358

Unfair Labour Practice - Discharge - Duty of Fair Representation - Evidence - Practice and Procedure - Applicant alleging that union's failure to take his discharge grievance to arbitration violating the *Act* - At conclusion of applicant's case, Board entertaining union's motion for non-suit without requiring it to elect whether it wished to call evidence - Board satisfied that applicant had presented no basis, on his own evidence, upon which application could succeed - Application dismissed

KENNETH EDWARD HOMER; RE IBEW AND ITS LOCAL 636; RE ST. CATHARINES HYDRO-ELECTRIC COMMISSION .....(May) 433

Unfair Labour Practice - Discharge - Duty of Fair Representation - Remedies - Trade Union - Trade Union Status - Applicant claiming that Association's failure to advance discharge grievance to arbitration violating the *Act* - Board rejecting assertion of Association and employer that Association not a trade union within the meaning of the *Act* - Board finding that Association violating its duty to applicant under section 69 of the *Act* by never turning its mind to merits of applicant's case - Association directed to consider merits of applicant's case, to conduct any investigation it feels appropriate, and to advise applicant within specified period of what it intends to do and the reasons for its decision

SUSAN FORBES; RE THE SIMCOE COUNTY ROMAN CATHOLIC SEPARATE SCHOOL CUSTODIANS; THE SIMCOE COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD.....(Dec.) 1283

Unfair Labour Practice - Discharge - Evidence - Just Cause - Employee alleging discharge without just cause contrary to section 81.2 of the *Act* - Employer alleging that discharge justified in view of culminating incident - Board permitting employer to rely on prior employment

record where employer prepared to prove misconduct making up that record - Board finding discharge penalty just and reasonable in circumstances - Application dismissed

THE BRICK WAREHOUSE CORPORATION; RE WILLIAM HODGSKISS .....(Nov.) 1206

Unfair Labour Practice - Discharge - Intimidation and Coercion - Judicial Review - Board finding employer in violation of the *Act* in respect of severity of penalty imposed on one employee for releasing confidential information regarding employee names and telephone numbers, the exclusion of another employee from working in the office, and in respect of communications about unions in meetings with employees - Board dismissing complaint in relation to other discipline and hiring practices and meetings at two other employer locations - Employer's application for judicial review dismissed by Divisional Court

SOBEYS INC. RE; U.F.C.W., LOCAL 1000A..... (July) 715

Unfair Labour Practice - Discharge - Intimidation and Coercion - Judicial Review - Stay - Board finding employer in violation of the *Act* in respect of severity of penalty imposed on one employee for releasing confidential information regarding employee names and telephone numbers, the exclusion of another employee from working in the office, and in respect of communications about unions in meetings with employees - Board dismissing complaint in relation to other discipline and hiring practices and meetings at two other employer locations - Employer applying for judicial review of Board's decision and seeking interim relief - Motions judge staying Board's decision - Order of motions judge set aside by 3-judge panel of Divisional Court on basis that judge applied wrong test on a stay and on basis of certain factual errors in her decision - Divisional Court holding that strong *prima facie* case that decision patently unreasonable must be made out before a stay should be granted

SOBEYS INC. RE; U.F.C.W., LOCAL 1000A..... (Feb.) 155

Unfair Labour Practice - Duty of Fair Referral - Duty of Fair Representation - Interim Relief - Remedies - Applicant working as lighting technician in film and television production - Applicant alleging that his union violating *Act* in various ways in denying him work opportunities and requesting interim order directing union to issue permits on request of employers authorizing applicant's hiring pending disposition of unfair labour practice complaint - Board finding that potential harm to applicant of not granting order primarily financial and that balance of harm weighing in favour of union - Application dismissed

BRYAN FORDE; RE NABET, LOCAL 700 .....(Dec.) 1296

Unfair Labour Practice - Duty of Fair Representation - Interim Relief - Remedies - Applicant taxi drivers requesting order from Board preventing union from selling three taxi stand spots until complaint alleging breach of union's duty of fair representation decided - Applicants alleging potential harm to third parties if interim order not made - Board noting that harm to third parties would not in itself generally be sufficient to warrant granting interim order - Application dismissed

SHARIAR NAMVAR AND MALIK AWADA; RE RWDSU, AFL:CIO:CLC AND BLUE LINE TAXI COMPANY LTD. ....(Aug.) 793

Unfair Labour Practice - Duty of Fair Representation - Practice and Procedure - Board exercising its discretion against inquiring into complaint for various reasons, including its finding that inquiry would be an expensive and largely academic exercise serving no tangible policy or labour relations interest - Application dismissed

WILLIAM A. CURTIS; RE THE COMMUNICATIONS, ENERGY & PAPERWORKERS UNION OF CANADA, THE CANADIAN PAPERWORKERS UNION..... (Dec.) 1260

Unfair Labour Practice - Duty of Fair Representation - Practice and Procedure - Complainant alleging that union's failure to arbitrate her grievance violating duty of fair representation - Board sketching out general framework within which complainant's rights must be deter-

mined - Board finding that union acted in good faith and that there was nothing arbitrary or discriminatory in the way union represented complainant - Complaint dismissed

LEILA YATEMAN; RE CUPE, LOCAL 1974 ("THE UNION"); RE KINGSTON GENERAL HOSPITAL ("THE HOSPITAL").....(Aug.) 77

Unfair Labour Practice - Duty to Bargain in Good Faith - Employer alleging that union proposal regarding desk top publishing comprising bargaining unit scope provision and that union's intention to take issue to impasse violating duty to bargain - Employer also alleging that modified proposal made after employer's complaint to the Board amounting to penalty which union sought to impose on employer for filing bad faith bargaining complaint - Complaints dismissed

COMMERCIAL GRAPHICS LIMITED; RE GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, LOCAL 500M..... (June) 483

Unfair Labour Practice - Duty to Bargain in Good Faith - Union alleging that Board of Education breached duty to bargain when its elected trustees failed to approve proposed settlement put before them by their negotiators with recommendation for ratification - Board concluding that circumstances faced by Board of Education when asked to ratify had shifted sufficiently and generated sufficient economic uncertainty to warrant reconsideration of Board of Education's earlier collective bargaining stance - Change in circumstances following tentative settlement found to be real and compelling - Board of Education's decision not pre-  
tence or subterfuge - Complaint dismissed

BOARD OF EDUCATION FOR THE CITY OF HAMILTON, THE; RE LOCAL 527, O.P.E.I.U. .... (Apr.) 308

Unfair Labour Practice - Employee complaining against unknown individual and requesting that Board investigate - Board having no mandate to gather evidence, nor to proceed against "unknown persons" - Facts pleaded, even if true, not making out case for breach of the Act - Application dismissed

LEO M. LABATT; RE EMPLOYEE OF SUNNYBROOK HEALTH SCIENCE CENTRE ..... (June) 522

Unfair Labour Practice - Evidence - Practice and Procedure - Board not permitting counsel to pursue line of questioning where application did not particularize any of the facts on which the union was seeking to cross-examine

MORRISON'S MEAT PACKERS LTD.; RE UAW ..... (Mar.) 226

Unfair Labour Practice - Interference in Trade Unions - Interim Relief - Practice and Procedure - Remedies - Union alleging that employer interfering with organizing drive by posting and distributing certain letter to employees - Board considering whether complaint making out arguable case and also assessing relative harm of granting or withholding relief - Board aiming to preserve union's right to meaningful remedy, should complaint be upheld, while intruding as little as possible on employer's interests - Employer directed to remove letter from any area in which it was posted and to refrain from communication with employees involving counselling workers to resign union membership - Board's order effective until disposition or settlement of complaint

REYNOLDS-LEMMERZ INDUSTRIES; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) ..... (Mar.) 242

Unfair Labour Practice - Interference in Trade Unions - Interim Relief - Remedies - Union Successor Status - USWA filing complaint alleging employer interference in union activity and making request for interim relief - Application for interim relief made in context of continuing dispute between USWA and RWDSU over who represents employees of employer, and

in context of earlier interim Board order directing that employees to continue to be represented in dealings with employer by individual union representatives who had customarily dealt with employment problems prior to July 1993 - Board granting further interim orders in connection with leaves of absence for union business and other matters in order to ensure that employer does not actively support either union at expense of the other, pending Board's decision in USWA's successor rights application

NEW DOMINION STORES, A DIVISION OF THE GREAT ATLANTIC AND PACIFIC COMPANY OF CANADA, LIMITED AND RWDSU, AFL-CIO-CLC; RE RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCAL 414 ..... (Sept.)

880

Unfair Labour Practice - Interference in Trade Unions - Natural Justice - Practice and Procedure - Board dismissing motion alleging that manner in which hearing conducted by panel denying natural justice - Board finding that discipline by employer of union executive member for engaging in legitimate and protected union activity violating the *Act* - Employer directed to rescind discipline

THE CORPORATION OF THE CITY OF HAMILTON; CUPE, LOCAL 5.....(Nov.)

1214

Unfair Labour Practice - Interference in Trade Unions - Right of Access - Employer directing employees not to engage in union activity or discussion of union related issues on company premises - Board rejecting employer's argument that section 11.1 of the *Act* altered the law regarding the right of employees to engage in union activity in the workplace - Prohibition of union activity and discussion of union related issues violating section 65 and 67 and declared to be of no effect

SOBEYS INC.; RE UFCW, LOCAL 1000A.....(July)

675

Unfair Labour Practice - Interim Relief - Remedies - Union alleging that, as result of participation by employees in arbitration proceeding, employer altering employees' hours of work in violation of the *Act* - Union seeking order restoring employees' hours of work pending resolution of unfair labour practice complaint - Union and employer having collective bargaining relationship since 1988 and Board identifying no significant labour relations harm to affected employees or union if order not made - Board refusing to order employer to restore employees' hours of work, but directing it to notify employees of their rights under the *Act* through distribution of Board notice

FORT ERIE DUTY FREE SHOPPE INC.; RE ONTARIO LIQUOR BOARDS EMPLOYEES' UNION .....(Dec.)

1307

Unfair Labour Practice - Picketing - Strike Replacement Workers - Right of Access - Board finding that company violated section 73.1 of the *Act* by using prohibited replacement workers to perform work where employees on strike - Board making cease and desist order and directing that its decision be posted on outside of each struck store - Board declining company's request for restrictions on picketing under section 11.1 of the *Act* - Board noting that picketing had generally been peaceful, that section 11.1 contemplating some disruption without giving rise to restrictions, and that company made little attempt to utilize other means of assistance available to it

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED; RE UFCW, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK AND CLIFF SKINNER .....(Nov.)

1230

Unfair Labour Practice - Practice and Procedure - Stay - Subsequent to union's unfair labour practice complaint being filed, employer obtaining *ex parte* court order under *Companies' Creditors' Arrangement Act* staying proceedings before the Board - Registrar directed to set

matter down for hearing to receive parties' submissions on Board's jurisdiction to hear and decide complaint in light of court's order

LANDAWN SHOPPING CENTRES LIMITED; NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) ..... (Nov.) 1150

Unfair Labour Practice - Sale of a Business - Respondent appointed by Ontario Court (General Division) as receiver and manager of nursing home in December 1991 - Union complaining that respondent failing to adhere to collective agreement between union and nursing home and refusing to bargain with union - Board finding respondent to be successor employer for purposes of the Act - Board remitting remaining issues to parties for consideration and remaining seized

DELOITTE & TOUCHE; RE C.U.P.E. AND ITS LOCAL 1343 ..... (Feb.) 109

Unfair Labour Practice - Strike - Strike Replacement Workers - Whether "supervision" of apprentice projectionist constituting bargaining unit work which, when performed by assistant manager transferred to struck location after notice to bargain, violating section 73.1 of the *Act* - Board finding that operating projection equipment constituting bargaining unit work and that getting work done in a different way not altering characterization as bargaining unit work - Use of assistant manager in this case to supervise apprentice projectionist contravening *Act* - Employer directed to stop using assistant manager for this purpose and Board remaining seized with respect to any outstanding remedial issues

FAMOUS PLAYERS INC.; RE IATSE, LOCAL 357 ..... (Dec.) 1270

Unfair Labour Practice - Strike - Union asserting that employer violated *Act* when it denied bonus payments to striking employees in the years 1991 and 1992 - Board finding that while it may have been permissible for employer to have withheld bonus payments to striking employees under strict terms of "recognition bonus plan", its reasons for doing so were not free of anti-union or prohibited considerations - Employer directed to compensate employees

THE CAMBRIDGE REPORTER, A DIVISION OF THOMSON NEWSPAPERS CORPORATION, THOMSON NEWSPAPERS CORPORATION AND; RE SOUTHERN ONTARIO NEWSPAPER GUILD ..... (Oct.) 1035

Union Successor Status - Bargaining Rights - Conciliation - Interim Relief - Reference - Remedies - Various locals of RWDSU rejecting proposed merger with UFCW, disaffiliating from RWDSU, amalgamating with each other to form RWDSU/Canada, and merging with with USWA to form Canadian Service Sector Division of USWA - Board in *A & P* case declaring USWA to have acquired rights, privileges and duties of its predecessors - USWA seeking interim order in connection with further 200 pending union successor rights applications - Board declaring USWA to be interim exclusive bargaining agent for employees in bargaining units affected by pending successor rights applications - Board advising Minister of Labour that he may treat USWA as exclusive bargaining agent in respect of affected bargaining units, and may appoint arbitrators and conciliation officers as requested by USWA notwithstanding assertions made by any other trade union - Board dismissing cross-application for interim relief made by UFCW

THE BAY - KINGSTON, ET AL; RE RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCALS 414, 422, 440, 448, 461, 483, 488, 1000 AND 1688 ..... (Dec.) 1350

Union Successor Status - Bargaining Rights - Interim Relief - Remedies - Alleged predecessor union resisting alleged successor union's application under section 63 of the *Act* claiming that it has bargaining rights for several thousand employees of grocery chain - Board directing that employees at each store to continue to be represented in their dealings with their

employer by the individual union representatives who customarily dealt with employment problems prior to July 1993, pending the Board's determination concerning which union has bargaining rights- Board directing that copies of its decision be provided to all store managers and that copies be posted in each store

NEW DOMINION STORES, A DIVISION OF THE GREAT ATLANTIC AND PACIFIC COMPANY OF CANADA, LIMITED; RE RWDSU, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCAL 414, 422, 440, 461, 1000 AND THE RWDSU, CANADIAN SERVICE SECTOR DIVISION OF THE USWA; RE RWDSU, AFL-CIO-CLC AND ITS LOCAL AFFILIATE RWDSU, AFL-CIO-CLC, LOCAL 414, 429, 545, 579, 582 AND 915 .....(Aug.)

783

Union Successor Status - Bargaining Rights - Various locals of RWDSU rejecting proposed merger with UFCW, disaffiliating from RWDSU, amalgamating with each other to form RWDSU/Canada, and merging with USWA to form Canadian Service Sector Division of USWA - Board declaring USWA to have acquired rights, privileges and duties of its predecessors

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED, RE RWDSU, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCAL 414; RE RWDSU, AFL-CIO-CLC AND ITS LOCAL AFFILIATES RWDSU, AFL-CIO-CLC, LOCAL 414, 429, 545, 579, 582, 915 AND 991 ..... (Sept.)

885

Union Successor Status - Interference in Trade Unions - Interim Relief - Remedies - Unfair Labour Practice - USWA filing complaint alleging employer interference in union activity and making request for interim relief - Application for interim relief made in context of continuing dispute between USWA and RWDSU over who represents employees of employer, and in context of earlier interim Board order directing that employees to continue to be represented in dealings with employer by individual union representatives who had customarily dealt with employment problems prior to July 1993 - Board granting further interim orders in connection with leaves of absence for union business and other matters in order to ensure that employer does not actively support either union at expense of the other, pending Board's decision in USWA's successor rights application

NEW DOMINION STORES, A DIVISION OF THE GREAT ATLANTIC AND PACIFIC COMPANY OF CANADA, LIMITED AND RWDSU, AFL-CIO-CLC; RE RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCAL 414 ..... (Sept.)

880

Voluntary Recognition - Construction Industry - Related Employer - Board rejecting submission that making related employer declaration would extend, rather than preserve bargaining rights and that voluntary recognition agreement in this case was for a fixed term which ended in April 1992 - Employer cannot enter into collective bargaining relationship on trial or purely time-limited basis - Rule of *contra proferentem* not applying in this case - Board satisfied that no untoward delay by applicants in bringing application and that responding parties not prejudiced by delay - Application granted

WOODSTOCK ROOFING AND SHEET METAL, GREAT NORTH INDUSTRIES INC. AND GNI CONSTRUCTION LTD., #515422 ONTARIO LIMITED, C.O.B. AS; RE ONTARIO SHEET METAL WORKERS' & ROOFERS' CONFERENCE AND SMW, LOCAL 539 ..... (May)

459

Voluntary Recognition - Termination - Applicant asserting that trade union was not, at the time it entered into a voluntary recognition agreement with employer, entitled to represent employees in the bargaining unit - Board satisfied that results of ratification vote showing

that vast majority of employees in the bargaining unit supported the voluntary recognition agreement and the union - Application dismissed

ONTARIO HYDRO, ROBERT S. HIGGINS; RE ERIC DE BUDA; RE THE SOCIETY OF ONTARIO HYDRO PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES.....(Jan.)

46

Witness - Adjournment - Construction Industry - Evidence - Judicial Review - Jurisdictional Dispute - Natural Justice - Practice and Procedure - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to members of Sheet Metal Workers' union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters' union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers' union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists - Sheet Metal Workers' union applying for judicial review on grounds of alleged denial of natural justice - Sheet Metal Workers' union moving to strike affidavit filed by Carpenters' union in judicial review application - Divisional Court dismissing motion to strike affidavit

VIC WEST STEEL, CJA, LOCAL 1256; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE AND SMW, LOCAL 539; RE ONTARIO SHEET METAL AND AIR HANDLING GROUP .....(Nov.)

1243

Witness - Adjournment - Evidence - Jurisdictional Dispute - Practice and Procedure - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to members of Sheet Metal Workers union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists

VIC WEST STEEL, CJA, LOCAL 1256; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE AND SMW, LOCAL 539; RE ONTARIO SHEET METAL AND AIR HANDLING GROUP .....(Mar.)

256

Witness - Certification - Charges - Evidence - Intimidation and Coercion - Petition - Practice and Procedure - Board reviewing principles governing restricted scope of reply evidence and declining to permit employer to split its case by calling one witness to events in dispute during its case in chief, and the other witness during reply - Board concluding that timely petition not a voluntary expression of employee wishes - Board finding no intimidation or other improper conduct by union casting doubt on union's membership evidence - Certificate issuing

TATE ANDALE CANADA INC.; RE UNITED STEELWORKERS OF AMERICA.....(Apr.)

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ISSN 0383-4778









